

Trapped

A study about how a selection of divorced and married Sunni Muslim women in the city of Tripoli (طرابلس ṭarablūṣ) in Lebanon (لبنان lubnān) perceive the differentiation in Family Law administered by the *Sharī'a* Courts (المحاكم الشرعية al-maḥākīm sh-shar'īyya) in terms of child custody and divorce to be discriminating against their rights, and the factors behind their failure to protect themselves legally against this inequity.



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Abstract

This study explores how the Muslim Sunni Women in the city of Tripoli- Lebanon perceive the the inequity in the rights of women in terms of those of men within the Personal Status codes practiced today in the Sunni Muslim *Shari'a* Courts in the country. Lebanese women and men in general are subject to an imbalanced patronage as a result of the patriarchal conditions dominating the Lebanese society and its various communities. This project further explores the factors that have led to the failure of these women to legally protect themselves against this inequity when perceived as discriminating. This is embedded in the institutionalization of an inequity within the social, economic, and political spheres. The factors behind this institutionalization include aspects related to the kinship culture and traditionalism, the political regime, and the relation between the state and the religious establishments in Lebanon. Patriarchy, patrilineality, i.e. tracing descent, kinship, or title through the male line, and the traditions that contribute to their survival have had a negative effect on the development of women's rights, and the relation between the state and the religious establishment specifies the role the religious establishment has maintained in the process of decision making.

In addition, the Islamic laws that are in practice today have been politically influenced and hence are different from the Islamic Laws in principle that have provided an extent of equality among men and women. A change in these has taken place towards an imbalanced inclination towards women and their legal rights originally given to them in the Islamic laws provided by the Prophet himself before his death. This discrimination has become institutionalized in a male-dominant religious world within gender-based differentiating laws. This paper considers the correlations that exist between the Islamic Family Law that are practiced today and the factors mentioned above. In Lebanon, the direct effects of Family Law as practiced today, are studied by presenting most of the provisions that are in practice in the Family Law within the Sunni Community and that have institutionalized the rights of women to become different from those of men. The obstacles in the development of women's rights in citizenship and religious legal laws are a combination of factors rather than the result of one outstanding determinant. This is done in a context of patriarchy in which the different relations among these provisions, patriarchal traditionalism, Lebanese Constitution, nation-formation project of the country and the effect of the interpretations of Family Law within Islam are all interrelated.

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Introduction

History, religion, patriarchy and history of colonialism have played critical roles in establishing and maintaining inequity between the religious rights of women in Lebanon. This is especially marked in the Personal Status Laws that are administered by the *Sharī'a* courts. This thesis is a discourse about the factors that have led to the establishment of this inequity, and their role in impacting the lives of women in the Sunni Community of the city of Tripoli.

In the Family Law of the *Sunni Sharī'a Courts* of Lebanon, there are differences in the treatment of men and women in matters of divorce and child custody. In order to elaborate on this differentiation, three steps are to be followed. The first one is a research of the legal literature in terms of applied *Sharī'a* Laws which follows the Ḥanafī School of legal affairs. The second step is to undergo a survey of the practiced differentiations in the decisions taken by this court in matters of divorce and child custody through interviewing already- divorced women. In addition, this step is to include a second survey of how these women, and other married ones, have used their rights in a prenuptial agreement that they can include in their marriage contract in order to protect them against this inequity. The third step is a survey of the literature around the factors related to the condition of patriarchy and its impact on the society in Lebanon that had made it difficult for the Sunni Muslim Women to fail in using their right in a prenuptial agreement. These factors include the effects of the successive colonization that Lebanon went through during the last five hundred years until its independence in 1943, the strategic location of the country within the spread of globalization, the building project of the Lebanese Nation, the Lebanese structure of the family, and the function of the Muslim religious institutions.

Definitions

Gender discrimination is discrimination based on sex and is defined as adverse action against another person, which would not have occurred had the person been of another sex. This is considered a form of prejudice and is illegal in certain enumerated circumstances in most countries.

Family law is an area of the law that deals with family-related issues and domestic relations including the nature of marriage, civil unions, and domestic partnerships; issues arising throughout marriage, including spousal abuse, legitimacy, adoption, surrogacy, child abuse, and child abduction; the termination of the relationship and ancillary matters including

divorce, annulment, property settlements, alimony, and parental responsibility orders. In Lebanon, there are 15 such laws pertaining to the different sects that the Lebanese belong to. Each sect has its own court in which it practices its own family law on its own constituencies.

A sectarian system exists in Lebanon. Lebanon's religious divisions are extremely complicated, and the country is made up of a multitude of religious groupings. The ecclesiastical and demographic patterns of the sects are complex. Divisions and rivalries between groups date back as far as 15 centuries, and are still a factor today. The pattern of settlement has changed little since the 7th century, but instances of civil strife and ethnic cleansing – most recently during the Lebanese Civil War of 1975 – has brought some important changes to the religious map of the country. Sectarianism is not necessarily synonymous with religiosity. These concepts should be differentiated from each other with an eye on the situational nature of sectarianism. One basic difference is that, while sectarianism may imply some intolerance of others and encourages feelings of competition against them, religiosity does not necessarily imply intolerance. Moreover, religiosity may be personal, dormant, and/or passive while sectarianism is strongly manifested in for example the build up of the country's public institutions.

Confessionalism is the predominant form of the balance of power in Lebanon. It has been slightly adjusted in the 1943 National Pact, an informal agreement struck at independence, in which positions of power were divided according to the 1932 census. Accordingly, Lebanon is a republic within the overall framework of confessionalism, *aṭ-ṭa'ifiyyah* الطائفية, a form of consociationalism¹ in which the highest offices are proportionately reserved for representatives from certain religious communities. Since the emergence of the post-1943 state and after the destruction of the Ottoman Caliphate, *al-Khilāfa al-'Uthmanīyya* الخلافة العثمانية, a national policy has been determined largely by a relatively restricted group of traditional regional and sectarian leaders. The 1943 National Pact, an unwritten agreement that established the political foundations of modern Lebanon, allocated political power on an essentially confessional system based on the 1932 census. The pact also by custom allocated public offices along religious lines, with the top three positions distributed as follows: the President is a Maronite, Christian; the Prime Minister is a Sunni Muslim; and the Speaker of the Parliament is a Shi'it Muslim.

The 18 officially recognized religious groups in Lebanon include four Muslim sects, 12 Christian sects, the Druze sect, and Judaism. The Muslim sects are the Shi'ite الشيعة al-Shi'a, the Sunni السنة al-Sunnah, the 'Alawit al-'Alawī العلوي, and the 'Ismā'īlī الإسماعيلي. The Christian sects are the Maronites, the Greek Orthodox, Greek Catholics, Armenian Orthodox Gregorians, Armenian Catholics, Syriac Orthodox Jacobites, Syriac Catholics, Assyrians Nestorians, Chaldeans, Copts, and Evangelicals which include Protestant groups such as Baptists and Seventh-day Adventists, and the Latin Roman Catholic.

Prenuptial Agreement is a contract preceding a marriage in which both spouses agree upon certain conditions to apply within the marriage and after it is dissolved. It is a written contract in which the rights of both bride and groom are stated clearly. In Islam, the prenuptial agreement is in the form of conditions that are added to the marriage contract itself. These conditions are expected to safeguard the rights of the bride against the right of her husband to divorce her unconditionally².

***Ḥanafī* School of Sunni Islamic Jurisprudence** is the most prominent and the oldest among all Sunni Schools with the largest number of adherents in the Muslim world. The *Ḥanafī*, حنفي, School was established after the Persian scholar 'Abu Ḥanīfa n-Nu'mān bin Thābit, أبو حنيفة النعمان بن ثابت³. It involves the logical process of examining the Qur'an and all available knowledge of the law, the *Sunna* 'al-Sunna, and then finding an example in these corresponding to the particular case under review so that 'Allāh's laws are properly applied to the new situation. This is done in order to determine the judgments necessary for the implementation of the Islamic law in a new environment. The Muslim Sunni courts in Lebanon follow the *Ḥanafī* School.

Sunna refers, in Muslim usage, to the sayings and living habits of Muhammad the Prophet, and his companions as recorded in *ḥadīth* حديث, including his specific words, habits, practices, and approvals. In Islam, the *Sunna* is significant because it addresses ways of life dealing with friends, family and government. A *ḥadīth* is a narration of the words and deeds of the prophet, and is regarded by traditional Islamic schools of jurisprudence as an important tool for understanding the Quran and Islamic jurisprudence.

The organization of the study

In addition to the introduction, this thesis consists of eight chapters and a conclusion. The methodological and ethical aspects of the study are addressed in chapter I which mainly

details the process that I have followed in my field work including an ethical dilemma that I encountered during some of the interviews and how it was resolved. In addition, it includes the strategies that I used in collecting the data and in interpreting and analyzing the material.

Chapter II presents the results from the field work that took place during December 2010 and January 2011 in terms of the effects of the family law in terms of gender discrimination in matters of divorce and child custody. This chapter also comprises the laws according to which the judges of the Sunni Muslim courts make their decisions in these matters. The experiences that some of the informants have gone through are recorded in Standard Arabic, transliterated and then translated.

Chapter III deals with the conclusions reached in the second part of the field work that took place during June and July 2011. The limited use of the prenuptial agreement that can be used by women to protect themselves from injustices in their marriages is analyzed. Different quotations expressed by a number of informants are recorded in Standard Arabic, transliterated and then translated.

Chapter IV introduces the argument that is presented in terms of the results. The chapter argues that the inequity that is manifested in terms of their rights in Family law and in the decisions reached in the courts is the result of an interconnected set of factors embedded in the patriarchal society in Lebanon. This fundamentally affects the citizenship laws in the Lebanese Constitution, the imagined nation of Lebanon, the structure of the kinship relations in the history of Islam and its development into the modern Islam that is referred to today in the country's Muslim juridical institutions. The question that runs through this study is how these factors have influenced women in not resolving to a simple legal procedure, the prenuptial agreement, in order to safeguard their rights against the differentiation exhibited in marriage and divorce proceedings.

Chapter V reflects upon four elements in the kinship relations that are manifested in the submission of women to their male family members. These are related to how age and gender determine placement in the extended family structure according to which privileges are distributed; to a subtle pact between the females and the males according to which the personal security of the females is exchanged for the financial security of the males; to the contradictions and conflicting themes in the criteria and eligibility of belonging to the People of Lebanon.

Chapter VI works on analyzing the arguments around the building of the modern nation of Lebanon in terms of how the Lebanese nation is imagined to be in terms of a distinction between men being the state and women being the nation. In addition, this chapter elaborates on the effects that the civil war that took place in the country between 1975 and 1991 on the changes within the different imagined roles of both men and women.

Chapter VII analyses some of the different elements that have left their imprints on the citizenship laws in terms of the differentiation between women and men. These elements are the roles played by the Lebanese Constitution, the foreign control on the formation of the citizenship laws, the state in developing discriminating citizenship laws, the relational rights and the religious institutions in the definition of the citizen, the globalization effect on the concept of the citizen, and the parents in building up their children's perception of citizenship.

Chapter VIII examines the Muslim religion in as much as it enhances discrimination against women in the family laws. This has been done through a differentiation between the concept of contractarianism and patriarchy and a differentiation between *Shari'a* and Islamic law. In addition, it has been done through the development of the Islamic legal laws in the lapse of the last century and through how the legal religious laws conceive gender in Islamic thought and how culture is misconceived as religion.

Chapter I: Methodical approaches and ethical implications

In this project, I get the chance to write about a topic that concerns me first hand. I am Lebanese, born and raised in the city of Tripoli. Because both of my parents are Muslim Sunni, I became Muslim Sunni myself at birth; hence my interest in this religious community. It is in this city that I went to school where I learned Arabic language and literature throughout 13 years followed by three years at the American University of Beirut. This background gives me the opportunity to find the relevant sources within the *Sharī'a* laws which are written in Arabic and to easily have access to judges in the *Sharī'a* courts and lawyers in matters of family law. Being native to Lebanon, I have the opportunity to perceive the nuances in the language used by the women that I interview in my field study without facing any obstacles. Having had an education in translation as well as being an officially certified translator in the District of North Lebanon, the Ministry of Justice ensures a proper translation of the expressions used in the field study that I have conducted during my stay in the country for the purpose of this project. Transcription is also made possible as a result of my formal education at the University of Oslo where I have received a bachelor degree a part of which are Arabic courses. The transliteration process is carried out according to the Library of Congress Arabic transliteration system.

Methodical approach

After having researched and collected data through the variety of methods that I have chosen in my field work, my hypothesis materialized and developed inductively. I followed the principles of the Grounded Theory which is a qualitative research technique where instead of starting with a theory, the researcher begins with the data and uses the data to generate a theory. The theory is created through the process of systematically analyzing the data through both inductive and deductive reasoning and through the analysis of research literature (Charmaz 2008: 11, fig 1.1). In this project, data is analyzed according to the principles of the emergent method of the Grounded Theory rather than hypothesis testing. Hence, enough data needed to be generated before my hypothesis materialized. According to Barney Glazer, what most differentiates grounded theory from much other research is that it does not test a hypothesis. It sets out to find what theory accounts for the research situation as it is aiming at understanding the research situation and to discover the theory implicit in the data. It is this distinction that is fundamental to the methodology which is responsive to the situation in

which the research is done. Therefore, it is driven by the data in such a way that the final shape of the theory is likely to provide a good fit to the situation (Glaser 2002: 24-26).

In reference to the above, I began my project by researching and collecting data, through observations at the court; reading books in Family Law, the Lebanese Constitution and legal literature including among others al-Shāfi'i, J. & al-Sharnibāsi, R. of 2008; Nader A. al-Shāfi of 2003. This has also included the interviews that took place during December 2010 and January 2011, in which divorced women were asked about their divorce procedure and how child custody in these cases had been resolved, my hypothesis started to materialize and develop from the data that I have collected. However, the data seemed to be insufficient to form a hypothesis after I had been informed by a lawyer, an expert in family matters whom I had interviewed, about the nature of the marriage contract in Islam and the existence of a prenuptial agreement in the form of conditions that any wife can add to the marriage contract in order to safeguard her rights in the contract. So, further interviews became a requirement for further investigation for a better theoretical development. In June- July 2011, another visit to Tripoli took place for the purpose of continuing the research during which another survey was conducted among married women in order to collect data about women's actual knowledge about the possibility of including such conditions in their marriage contracts; the inclusion of these conditions in their own marriage contracts and their attitudes towards the prenuptial agreement as such. It was only then that the data needed for a hypothesis were secured.

Choosing the field and entering it

The survey was conducted in the city of Tripoli in the Northern District of Lebanon. It was gathered from the Muslim Sunni female population in the Middle town of the city (excluding the region of el-Mina الميناء, 'abu-Samra' ابو سمراء and el-Qubba القبة)¹. The field work took place on two occasions, in December 2010- January 2011 and June- July 2011. My choice fell on this city simply because it is my hometown which happens to be the second largest city in the country with the largest Sunni Muslim community. Everything and almost everyone is familiar to me, thus making my access to the informants smooth and fairly acceptable. Since I am a native, a woman, and a Sunni Muslim, the women in my study group opened up their hearts and shared their experiences with me. Realizing that my research is aimed at exposing their problem and the injustices they face and at calling for a change, these women have welcomed me into their lives and shared some of their most private moments and realities.

My project began with the use of online networks and contact with old friends and acquaintances that I introduced my project to and asked for their participation in my study group. To my surprise, every person I approached was willing to participate. I believe that this enthusiasm is a result of all the activities that have taken place recently in Lebanon, and a desire to put a stop to inequity against women in family and citizenship laws. Such activities have been gaining momentum and increasing in number among various social groups. My project was welcomed precisely because it was perceived as an integral aid to these activities.

The sampling strategy

For a high quality of data collection, the target population is sampled using the categorization method based on common features with quantifiable forms of data (Charmaz 2008: 18). In the city of Tripoli, the sample included a range of married and divorced women of various age groups in order to detect any difference among generations. They were simultaneously chosen from different parts of the city. I categorized the Middle Town of Tripoli according to the traditional and age- long divide it has been known for. The city is roughly divided into three parts in terms of economic status: the old town being relatively the poorest, the center is the residence of the lower middle class, while the Ma'rad area is where one finds the residents of the upper middle class and some of the upper class. Again, women are correspondingly divided into three groups one from each area of the city. This was done in order to detect any difference among these groups. This categorization has proved to be very useful in the coding process that took place at the end of the survey. I regard my sample to be reasonably varied when it comes to age, social, marital and juridical status.

Gathering the material and time spent in the field

Having no preconceived ideas or theories, I went on pursuing topics that I found important out of the situation itself (Charmaz 2008: 16). My field work was made up of two parts. In December 2010- January 2011, I collected field notes and had penned down conversations with individual women at the Muslim Sunni Court in the North Lebanon district which itself is located in the center of the city. With an objectionalist cast, and from the information collected at the courts, informational in- depth interviews are constructed with certain yes/ no questions and other open- ended questions (Charmaz 2008: 27). In these in depth- interviews, the interviewee is explored rather than interrogated (Charmaz 2008: 29). This part of the research aimed at studying the effects of divorce in a study group of 50

divorced women who were interviewed during a five week period. It is during this time that a new topic in the study emerged: the prenuptial agreement in Islam. This topic triggered further interest and planning and thus, another observation survey was planned for June- July 2011.

The second part of the field work took place in June- July 2011 in which the study group included both divorced and married women. This part aimed at studying the causes behind women not using the Prenuptial Agreement to protect themselves against the injustices they experience in the court's conduction of family matters. As in the first part of the survey, this part of the study included both informational interviews and questionnaires. As presented by Michael Patton in his book *Qualitative Methods and Evaluation Methods*, a qualitative method is helpful for finding patterns (Patton 2002: 4- 6). Both open- ended questions as well as closed- ended questions are included in the interviews. An example of the latter case is "did you sign a prenuptial agreement at the time the marriage contract was signed?" while "explain why or why not" is an example of the former case. Since the purpose of the interviews with the married women was done in order to include some statistical data for the purpose of finding patterned distinctive answers to having or not having signed a prenuptial agreement, the sample had to be large, in our case 100 interviewees. With larger samples, reliability can be secured.

It is possible to have a large number of interviews in order to draw sufficient statistical conclusions (Wright 1996: abstract).

In both parts, the interviews and the actual administration of the questionnaires took place in the homes of the interlocutors in the form of an informal visit over coffee; at the beach; in cafes; and at the markets. The average time spent on each interview was 20 minutes during which women were given a chance to share their own feelings and opinions and provide suggestions for change (Charmaz 2008: 16). However, 12 women refused to be interviewed, without giving any clear reason once they realized that the subject was about the rights of women in family law.

Questionnaires and Interviews

The interview method used follows the one advised by Kathy Charmaz in her book *Constructing Grounded Theory: a Practical Guide through Qualitative Analysis* in which she claims that a conversation with a purpose; hence semi- structured informational interviews are

employed in addition to questionnaires administered personally in a one-time survey of answers (Charmaz 2008). To reach best results, the survey method used involves a range of methods: the informal interviews, direct observation, self-analysis, and short life-histories. It is here that previously unknown information is brought forward to researchers and is crucial for project design, data collection, and interpretation of other data (DeWalt, DeWalt, & Wayland 1998: 15). The semi- structured interview together with two different sets of questionnaires is used (Keegan 2010: 1).

During my first visits to the court where all matters of family law are conducted, I drafted a preliminary questionnaire which I had to finalize after my conversations with the women who were present at the courts vicinities. With the help of a friend, the final version took around ten days to conclude. I had to omit certain questions, change others and add a few more. The result was a set of two questionnaires: one of them dealt with element of the family laws of the Muslim Sunni congregation in matters of marriage and effect of divorce. Another questionnaire dealt with the prenuptial agreement including the conditions added by the wife in the marriage contract. Questionnaires and interviews were conducted in Arabic. One third of the interviews were conducted among women from the upper class, lower area of Tripoli where the families of the highest socioeconomic background live. Another third was conducted in mid Tripoli, a middle class district and the last third was conducted among the lowest socioeconomic standard families in the upper part of Tripoli. Families of the middle and highest socioeconomic backgrounds possess equal levels of high education while those of Upper Tripoli have limited access to education with a majority not reaching beyond the first obligatory school grades, up to grade 9. It is important to mention that the children of the families in this area are increasingly reaching higher levels of education including university levels.

The aim of the interviews was to get as much concrete information as possible about how religiously legal inequity has manifested itself in the lives of the women involved in the study group, in order to better understand their attitudes and life choices. I wanted the interviewees to talk about the subjects in terms of their own frames of reference as much as possible. This allows the meanings and interpretations that the individual attributes to events and relationships to be understood and thus provide possibilities for a greater understanding of the subject's point of view. In order to live up to this ideal my approach was to make the questions as open-ended as possible. At the same time, my detailed questionnaires were

introduced with questions focusing on facts like age, marital status, and during the interviews I made sure that most of the questions that were addressed were either embedded in the conversation or explicitly stated and so written on the questionnaire paper itself. An advantage of using semi-structured and focused interviews is that they have the ability to challenge the preconceptions of the researcher and also give the flexibility needed to change both the questionnaire and the way questions are asked during the fieldwork.

Registration of information

There are some obvious advantages in using a tape recorder as all the information is preserved, and it is possible to go back to check and double check for mistakes (Eliot 2010: 1). However, I decided not to use this apparatus because of the informality of most of the interviews. I had to build the trust of the informants and to give these women a chance to open up their lives to me. Therefore, I decided to take notes and to abbreviate in order to get everything relevant on paper. In addition, I was advised by my friends not to use the tape recorder for fear of it being misunderstood as the women interviewed may misconstrue its use, thinking the information on tape may be blatantly used in the future to abuse their trust.

Categorization of answers to the questionnaires and interviews

Relying on the method of codification suggested by Charmaz which facilitates the comparison of data to data (Charmaz 2008: 44 box 3.3), the information collected is categorized according to similar answers to similar questions across the interviews whereby the number of each question yielding similar answers is noted. Another categorization is based on age where the questionnaires are grouped into 15- 29, 30- 44 and older than 45. A third category is based on the three socioeconomic districts of upper, middle and low. A fourth category is based on whether the women are married or divorced. A multi- variable system is used across all categories.

Research ethics

In my field work, I have attempted to a large extent to maintain ethical protections of my research participants. I have relied on the methods that allowed me to conduct my research in such a way that I could minimize the risks that I might have encountered in it. According to Dr. David F. Gullepie, minimizing the risks can be done by following four ethical principles. The first principle is to apply voluntary participation in terms of which people are not forced one way or the other into participating in the research. The second

principle is the informed consent according to which the prospective research participants must be fully informed about the procedures and must give their consent, whether formal or informal, to participate. The third principle is to avoid the risk of psychological harm incurred on the participants as a result of the research. The fourth principle of research ethics is to guarantee the participants both confidentiality and anonymity in order to protect their privacy in terms of keeping the information they provide within the research and not to make it public (Gullespie 1997).

All the women that participated in my research on both occasions in December 2010 and July 2011 were first given information about the research and simultaneously promised anonymity and confidentiality. This turned up to be a critical element in obtaining their consent informally due to the taboo these women might be subjected to when some facts about their private lives are exposed in their close community. None, excluding the 12 women mentioned above, refused to participate and so with their consent, they became voluntary participants in my research. In terms of the psychological impact, most of the women who had experienced extreme situations in their marriage, divorce or child custody, have misunderstood my role as a researcher. Being a woman and from their own community and speaking their language, I was perceived as a therapist, and they tried to share their lives beyond the subject at hand. This turned out to be therapeutic for them but has burdened me emotionally. After the first few interviews, I became smarter at controlling the meetings in terms of the time scope which was specified to the participants before the onset of the interview, between 15 and 20 minutes. The subsequent interviews were conducted in a better controlled space in which I was successful in distancing myself from the emotions of the others. However, some of the interviews that were conducted in restaurants took up to one hour due to the setting itself.

Chapter II: Research background, December 2010 and January 2011

In Lebanon, the Muslim Sunni *Shari'a* Court of Tripoli, which administers Family Law, is observed to differentiate the rights and obligations of men and women in many matters. Divorce, child custody and domestic violence are the focus of this chapter.

A gender differentiation in Family Law in matters of divorce

Here is a brief account of the current status quo of the lives of five women Tanya, Jinan جنان Jinān, Barbara, 'Ilhām الهام, and Hilda. They all live in different corners of the world outside Lebanon. They have fled Lebanon with their children at different times in the last 15 years. Tanya has been living in Sydney, Australia since 1998 together with her daughter now 22 years old. Since 2006, Jinan has been living in Lyon, France together with her daughter of 14 and her son of 16. Barbara, a Swiss citizen, lives today in Geneva, Switzerland and has been residing there since 1996 together with her daughter of 22. As for 'Ilhām, she left Tripoli in 2006 to London, Great Britain and has been living there ever since together with her son of 18. Hilda lives in Los Angeles in the U. S. A. She left Lebanon in 2003 and has been residing in Los Angeles together with her two sons of 10 and 12. These five women are holders of double citizenships- that of their homeland Lebanon and the other is that of the country in which they presently reside. None of them has ever returned to Tripoli since their departure, not even for short visits to friends and families. Because of their double citizenship, these women were able, with the assistance from their respective embassies in Lebanon, to leave Lebanon escaping from the destined loss of their children as a result of a pending divorce. An act of courage, perhaps, on behalf of these women came with their fleeing the country all together before the onset of the divorce and the eminent total loss of custody of their children.

These women took off together with their children far beyond the reach of their husbands before these latter put the name of their wives at relevant international travel point, thus barring them from travelling without the respective husband's certified permission to leave the country. This power to limit the movement of spouses is provided to husbands in article 73 of Family Law (Sh- Shafi'i, J. & Sh- Sharnibāsi, R. 2003: 407),

Standard Arabic text:

من الحقوق التي يترتبها عقد الزواج للزوج على زوجته ما يلي وجوب طاعة الزوجة لزوجها. و يقضي حق الطاعةان تقيم الزوجة مع زوجها في المسكن الذي اعدده لها والا تخرج من بيته الا باذنه

Transliterated text: mina l-ḥuqūqi l-latī yurattibuhā ‘aqdu z-zawāji lil-zawji ‘alā zawjatihi mā yalī wujūba tā‘atu z-zawjati lizawjihā. wa-yaqdī ḥaqq l-tā‘atī... ’ann tuqīma z-zawjatu ma‘a zawjihā fi l-maskani l-ladhī ’a‘addahu lahāwa-’allā takhruju min baytihi ’illa bi-’idhnihi.

Translated text: Among the rights a husband has over his wife that are included in the marriage contract is her obligation to obey him. This obedience includes the wife's residence in the house that he has prepared for her and not to leave it without his permission.

In leaving the country, the women intended to ensure that their rights of being mothers and that their desire to take care of their children are maintained and secured in another world where women and children are respected and treated as equal citizens to men. Some of the above mentioned women have had court orders issued in the form of restraining orders against their husbands in order to avoid the kidnapping of their children and their forceful return back to Lebanon without the consent of their mothers.

Here are parts of the conversations I had with three of these women on the telephone at the onset of my study reflecting the ordeals that they had to go through.

Jinān

Standard Arabic:

لا اصدق انه فعلها. عند عودته من العمل في احد الايام، اخبرني انه قد تزوج من زميلته في المستشفى حيث يعملان. واعطاني خيارين اما ان ابقى متزوجة وابقى حاضنة لاطفالي واما ان احصل على الطلاق و ان اتخل عنهم. اتصلت بالسفارة الفرنسية وقدموا لي المساعدة لكي اهرب مع اطفالي الى فرنسا حيث اعيش الان. ان الحياة في فرنسا ليست بالسهلة ولكننا سويا على الاقل

Transliteration: lā ‘uṣaddiqu ‘inna-hu fa‘alahā. ‘inda ‘awdatihi mina l-‘amali fi iḥdā l-‘ayyami, ‘akhbaranī ‘inna-hu qad’ tazawwaja min zamīlatihi fi l-mustashfā ḥaythu ya‘malān. wa-’a‘tānī khiyārayni ‘imma ’ann ’abqa mutazawwijatun wa-’abqa ḥāḍinatun li-’atfālī wa-’imma ’ann ’aḥṣala ‘alā ṭ-ṭalāqi wa-’atakhallā ‘anhum. ’Ittaṣaltu bi-s-safārati ‘al-faransiyyati wa qaddamū lī ‘al-musā‘adata likay ’ahruba ma‘a ‘atfālī ‘ilā faransā ḥaythu ‘a‘īsh l-’ān. Inna l-ḥayāta fī faransā laysat’ sahlātun wa-lākinnanā sawiyyan ‘alā l-’aqqal.

Translation: I don't believe that he did it! One day, he came from work and told me that he had gotten married with a colleague in the hospital where they both work. He gave me an alternative of either remaining married to him and keeping a joint custody of the children, or getting a divorce, and give up the children. I took contact with the French Embassy and they helped take the children to France. It has been tough in France for all three of us but at least, we are together.

Also by Jinān

Standard Arabic:

لا تطبق الحقوق في قوانين الشريعة. قال لي قاضي الشرع انا اطبق قواعد وقانوني، لا احد يمكن ان يوقفني. بالحقيقة، لا احد يتجرء ان يقول انني لا اطبق قوانين الشرع الحقيقية. ان باستطاعة القضاة تغييرها بمقابل بعض المال. لقد عملت بالمحاكم الشرعية لمدة سنوات الان وقد تعلمت الكفاية. انني اعرف ان زوجي قد دفع للقاضي لكي يقرر نفقة الاطفال مثلما اراد

Transliteration: 'inna l-ḥuqūqa 'al-muṭabbaqatu fī qawānini Sh- Sharī'a lā tuṭabbaq. Inna qāḍi Sh-Shar'i qad qālā lī: 'ana 'uṭabbiqu qawā'idī, wa-qānunī, lā 'aḥada yumkinu 'an yuwqifanī. Bil-ḥaqiqati lā 'aḥad yatajarra'u 'an yaqūla 'innani lā 'uṭabbiqu qawānīna S-Sharī'a l-ḥaqiqiyyah. Inna bi-'istiṭā'ati l-quḍ'āti taghyīruhā bi-muqābili ba'da l-māl. Laqad 'amiltu bil-mahākimi S- Shar'iyyati limuddati sanawāt, l-'ān wa-qad ta'allamtu l-kifāyah. Inna-ni 'a'rifu 'anna zawjī qad dafa'a lil-qāḍi likay yuqarrira nafaqata l-'atfāli mithlamā 'arāda.

Translation: The rights implemented in the *Sharī'a* laws are not applied. The *Sharī'a* judge told me: I apply my own rules, my own laws, nobody can stop me. In fact, nobody dares to say that the real *Sharī'a* laws are not applied. Judges can change them with some money. I've been in *Sharī'a* tribunals for many years, and I've learned enough. I know that my husband paid the judge to fix the alimony as he likes.

Tanya:

Standard Arabic:

ليذهب الى الجحيم. اعتقد انني اخذت القرار الصحيح عندما هربت سارا من البلد. انه لم يرها ابدا منذ ولادتها بعد ان طلقني والان قدقرران يطالب بالحضانة مباشرة عند بلوغها عمر الحضانة. انني سعيدة في استراليا وهي سعيدة ايضا

Transliteration: li-yadhhab 'ilā l-jahim! 'a'taqidu 'anna-ni 'akhadhtu l-qarāra s-ṣaḥīḥ 'indamā harrabtu Sarah mina l-balad. huwa lam yara-hā 'abadan mundhu wilādati-ha ba'da 'an ṭallaqanī, wa-l-'ān qarrara 'an yaṭluba l-ḥaḍāna mūbāsharatan 'inda bulūghi-hā 'umra l-ḥaḍāna. 'inna-ni sa'īdatun fī 'ustrāliya wa-hiya sa'īda ayḍan.

Translation: To hell with him! I believe I made the right choice by smuggling Sarah out of the country. He had never seen her since she was born after he divorced me and now he decides to file for custody just as she becomes of legal age. I am happy in Australia and she is happy too.

Hilda:

Standard Arabic:

كنت خائفة جدا عندما استلمت اوراق الطلاق لان زوجي قد طلقني غيابيا. بمساعدة اهلي، هربت اولادي الى بيروت ومن ثم الى لندن. يرفض ان يقوم باي اتصال معهم

Transliteration: kuntu khā'ifatan jiddan 'indama stalamtu 'awrāqa ṭ-ṭalāq li-'anna zawjī ṭallaqa-ni ghiyābiyyan. Bi-musā'adati 'ahlī, harrabtu 'awlādī 'ilā bayrūt wa-min thumma 'ilā london. yarfūdu 'an yaqūma bi-'ayyī ttiṣālīn ma'ahum.

Translation: I became so scared when I received the divorce papers, as I was divorced in absentia. With the help of my parents, I smuggled the boys to Beirut and then to London. He refuses to have any contact with the children.

Another case in which a woman tried to solve her problem in a custody matter is observed in the special case of a woman who appealed against the British Home Office's decision to remove her and her son back to Lebanon. The mother had arrived in the UK in 2004 with her son, born in 1996, claiming asylum following her divorce. The husband had not seen his son since the day he was born. She had divorced her husband because of domestic

violence and the terms of the divorce meant that she would retain care of the child until he was 7, at which time custody would be transferred to either the husband or a male member of his family. The appellant therefore left Lebanon in order to avoid having her son taken away from her. According to the court and with the support of all the Lords, the mother's article 8 rights to a family life of article 14 rights on the grounds of discrimination are at a risk of being breached because,

Lebanon is not a party to the European Convention, and this court has no standing to enforce observance of other international instruments to which Lebanon is party. Its family law reflects a religious and cultural tradition which, in one form or another, is respected and observed throughout much of the world. This country has no general mandate to impose its own values on other countries who do not share them¹.

An article that appears on families.com² looks at marriage in Islam as a God's gift to mankind offering peace and security, physical pleasure and children. Marriage is meant to nurture the soul, bringing happiness and fulfillment to both man and wife. Therefore, it is the center of the family and its thermometer; when the marriage is strong, the family flourishes, however, when the marriage is weak, all members of the family suffer. So God, in His infinite wisdom, has recognized that some people would be ill-suited for one another and can't be forced to live together. In this case divorce is allowed; however, it is not something to be taken lightly, and must only be used as a last resort. In fact, getting a divorce without a valid reason is considered a sin. This is expressed in a *ḥadiṯ* reported by 'Abu Dawud ابو داود, Prophet Mohammed (PBUH) said³,

Standard Arabic:

ابغض الحلال عند الله الطلاق

Transliteration: abghadu l-ḥalālī 'inda l-lāhi ṭ-ṭalāqu

Translation: Among lawful things, divorce is most hated by Allah

and according to Dr. Hassan Hathout, a physician, medical ethicist and leader of the Southern California Islamic community⁴,

Standard Arabic text:

امام الطلاق عرش الرحمن (الله) يرتجف

Transliteration: amāma ṭ-ṭalāqi 'arshu l-ruḥmāni (Allāh) yartajifu.

Translation: The throne of r- raḥman (God) dreads divorce.

However, this divorce seems to bring women complications in their lives as their rights in it are reduced in comparison to those of their husbands. In my field work that took

place during the month of December 2010 and January 2011, a light was shed on the conditions of those women who have experienced divorce and its consequences on their lives. My study group included divorced women in the Muslim Sunni community in the city of Tripoli. This part of my study comprised two parts. The first part was an observation of women within the premises of the Muslim Sunni Court of the district of the North of Lebanon who had approached the court for different reasons in many matters including among others divorce, alimony and child custody. The second part of my study included the conduction of a number of private interviews with a number of divorced women selected either from among my acquaintances, family members, or were randomly chosen from among near and far neighborhoods.

The following findings were recorded. Three women experienced forceful divorce, one of which was divorced in absentia, the divorce papers were delivered to her by her brother-in-law. None of these women was paid the dower, and none has attempted to fight legally for her rights. 15 other women were divorced in return for forgoing their dower, and before getting a final divorce, two of them were put in a house of obedience بيت الطاعة baytu ṭ-ṭa'a, in which the wife is forced to live with her husband in the house he chooses, before they forgo their dower which in both cases was forgone as alimony for the children in return for a divorce. Many had to approach the civil courts to raise a case in the executive civil courts against the husband for not paying child alimony as decided by the religious court; the civil courts eventually ruled in the women's favor. One extreme case is that of a woman who was denied divorce by the husband as he refused to give consent.

In three other cases, women were subjected to the husband's marriage to a second wife who lived in a separate home. In these last cases, women didn't want to divorce and remained in a state of hateful matrimony thus avoiding the risk of losing custody over the children and the financial support of the husband. In addition, four women experienced the threat of being divorced in the instance of maintaining a job or getting employment at a later point in the marriage. One ended up giving up her marriage for her job. As for the women in my study group who got remarried before the children reached the legal age of 7 and 9, at the time of the interview, they were denied child custody but a joint custody with their husbands was later approved. However, in three of the cases, the women were denied visitation rights in contradiction to the court's decision in the matter. In two of the cases, this occurred automatically as the fathers are living abroad for the most part of the year. In the third case,

the mother was reluctant to demand her daughter back because of her inability to be financially supportive and to fulfill the child's needs. In this case, visitations are set to two hours a week on a Friday afternoon in the grandparents' home.

Some women have also been subject to issues related to her working outside the house. These women were not allowed by their husbands to hold jobs. According to *Sharī'a* Laws, one of the conditions of marriage is that the wife is to receive an allowance while married in return for providing the husband with sexual services whenever he desires in order to fulfill the purpose of the marriage. This allowance is expected to cover her needs including alimentation, clothing, residence and a housemaid,

Standard Arabic text: the Qur'an, the Divorce Sūra number 7 (sh- Sharnibāsi & Sh- Shafi'ī 2008: 373)

انه يمكن ان يتولى الإنفاق على زوجته من ماله وإلا ما يجلب له الله

Transliteration: 'anna-hu yumkinu 'an yatawalla l-'infāqa 'alā zawghati-hi min māli-hi wa-'illa mimmā yajlibu la-hu llāh.

Translation: He who can, shall spend on his wife from his money otherwise from what God brings to him.

Therefore, a wife, working outside her marital home and whose husband refuses this condition, will lose her allowance because she will not be able to provide for him with sexual services, during the time she spends at the work place, with the sexual services he is entitled to from her any time ('al- Shāfi'ī & 'al- Sharnibāsī 2008: 381- 382).

A gender differentiation in Family Law in matters of child custody

In child custody matters in the *Ḥanafī* principles, most divorced women lose custody of their children when these latter reach the legal age of 7 for boys and 9 for girls. However, during the first week of my residence in Tripoli, a decree was issued by the highest court of the Sunni Congregation, the Mufti and his council⁵, in which the legal age was raised to 12 years for both boys and girls, conditioned by the mother's ability to carry out the responsibility of taking care of her children. This law has a retroactive effect concerning children that have already been removed from their mothers' care upon having reached the ages of 7 and 9. These children are to be returned to their mothers until they become of the new legal age. According to Judge Şari, advisor to the Court of Cassation and Chairman of the Judicial Inspection in the Sunni *Sharī'a* courts in Lebanon, after the law was approved in the Cabinet in 2009, many women have patiently refrained from declaring divorce until the

law was approved by the Mufti on the 6th June 2011. It is this law that has extended mothers' rights concerning child custody.

According to the Family Law of the Muslim Sunni Congregation, a man by default can divorce his wife through a repudiation directed verbally or in writing to his wife in the presence of witnesses (Bawwābata l-mar'ati 2010: (أين التمييز في الزواج وفسخ الزواج وما هو المطلوب)). In the *Sharī'a* laws,

Standard Arabic text:

الطلاق حق للزوج وحده يستعمله متى يشاء بإرادته المنفردة ومن دون حاجة إلى تبرير أو موافقة أو علم من الزوجة أو تدخل من جانب القضاء

Transliteration: 'aṭ-ṭalāqu ḥaqqun liz-jawzi waḥdi-hi yasta'milu-hu matá yashā' bi-'irādati-hi l-munfarida wa-min dūna ḥājatin li-tabrīrin 'aw muwāfaqatin 'aw 'ilmin mina z-zawja 'aw tadakhkhulin min jānibi l-qaḍā'.

Translation: Divorce is a right given solely to the man to use whenever he wishes and single-handedly and without any need for justification or approval or knowledge of his wife or any interference by the judiciary.

So, a man can divorce by power of attorney given to another person or in absentia. The divorce is then put into action legally in the court. There are two types of divorce, one type allows the man to change his mind within a three month period with or without her consent and/or allows the couple to remarry at a later date. The other type of divorce requires the man to repudiate marriage and/or divorce of the same woman three times before the divorce becomes final. As for the woman, she can demand a divorce only under particular circumstances or can forgo her alimony and belated dower in order to do so unless she has stipulated in the marriage contract that she has the right to initiate a divorce. It is only in this case that she may do so without losing any of her rights⁶.

As in matters of child custody, the following findings were observed among the women of my study group in three of the cases. The husband violated the decision taken by the court in providing the mother child custody for the children under the legal age. In this case, an appeal over two instances was held after which the court order was reversed. In such cases, time taken before a final decision is made varied from weeks to months according to the severity of the violations and counter demands. In one of the cases, the divorced mother had to approach the civil courts and raise a lawsuit against the husband who was eventually sentenced to jail for refusing the payment of alimony as agreed upon by the court. However, his parents paid his dues just before the implementation of the court order.

According to Kristine Uhlman, in matters of child custody, the father by default is the legal guardian of his minor children, and he is responsible for them financially and must continue to pay for their upkeep even when they are under the custody of their mother. Under *Sharī'a* laws, a father is the natural guardian of his children's persons and property (Uhlman 2004: part 3). However, under particular circumstances and in the best interest of the children, the court can intervene and amend custody rules. As for the mother, she may lose custody if she is a non-Muslim or if she remarries and has a daughter who is not legally prohibited through kinship to her new husband; in other words, in case the new husband can legally have sexual intercourse with the daughter. Under particular circumstances that have to do with the best interests of the child, the court can intervene and amend custody rules in these cases as well (Akyaz 2011).

Uhlman reflects upon the period during which the mother has the physical custody of her children. A mother is considered a foster parent *حاضنة الاطفال* *ḥādinatu l-'atfāl*, and she has a right to the physical, not to the legal, custody of her child until the child reaches the age of custodial transfer, at which time the child is returned to the physical custody of the father or the father's family. The right to physical custody is not an absolute right in the sense that a mother or father who possesses physical custody cannot prevent the other parent from seeing the child. Moreover, after divorce during the period of the mother's custody, she is legally entitled to receive child alimony from the father to help her maintain the child. Uhlman presents the existence of a controversial issue in the *Ḥanafī* view of child custody. Although most *Ḥanafī* jurists set the age at which boys are to be taken over by the father at seven or nine, the age when the boys are expected to have become totally independent from the mother in physically taking care of themselves, they disagree on when a mother's custody of her daughter should end. Most maintain that the mother's custody ends when the girl reaches puberty, set at either nine or eleven years of age. However, others allow the mother's custody to last until the girl reaches the age of womanhood set by most jurists at the first time she menstruates (Uhlman 2004: part 3).

The dispute over the age of womanhood continues. According to Aynur Akyaz, different girls first start their menstruation at different ages. His study has shown that the onset of menstruation is dependent on the region in which the girl is living in such a way that girls in warmer countries menstruate at an earlier age than those living in colder regions. Hence, the age can vary between 9 and 24. Others consider 15 to be the right age for a girl to start having children and to begin with her wifely duties. Others claim that this age is

determined by the age at which a girl can demonstrate to others that she is able to sexually attract a man, form an intimate, enduring, exclusive, marital relationship with him, and that she can reproduce and care for her own children, in addition to being prepared to accept economic dependency (Ibrahim 2009: 398).

Chapter III: Research background, June- July 2011

The prenuptial agreement

During the first part of my field work, I came across the existence of a legal right that Muslim women can use as a protection against all the different effects that family law may have in differentiating against them in many matters including marriage, divorce, child custody as well as domestic violence. This is in the form of conditions agreed upon by the couple and to be included in the marriage contract to be maintained within the marriage and in case of a divorce. Examples of such conditions are: the husband is not to take another wife, not to bring home male friends after a certain time in the evening, not to prohibit his wife from working, not to force his wife to wear the head scarf, not to force his wife to forfeit her dowry in case she wants a divorce, not to use physical punishment against her, etcetera. These conditions are referred to in this paper as a prenuptial agreement. The existence of such an agreement triggered another research instinct in order to study how Muslim women are using this right that can help them maintain their dignity and protect them against any eventual maltreatment from their husbands.

In Christianity, the marriage contract is known to be a spiritual one between the woman and the church, and this marriage is expected to last until death whereupon the contract becomes null and void. However, the marriage contract in Islam is a civil contract like any other official contract; thus, it is negotiable and can be broken or ended. This is affirmed in the following texts:

- Standard Arabic text: (Qur'an 30:21)
ومن آياته أن خلق لكم من أنفسكم أزواجا لتسكنوا إليها وجعل بينكم مودة ورحمة إن في ذلك لآيات لقوم يتفكرون

Transliteration: wa-min 'āyātihī 'an khalaq-na lak-um min 'anfusi-kum 'azwajan li-taskunu 'ilay-hā wa-ja'ala bayna-kum muwaddatan wa- rahma. 'inna fī dhālika la-āyātin li-qawmin yatafakkarūn.

Translation: And among His Signs is this that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your hearts (Qur'an 30:21, Ali Yusuf Translation).

- Standard Arabic text: (Qur'an 30:19, Al- Shafi'i, J. & Al- Sharnibasi, R. 2008: 430)
يا أيها الذين آمنوا لا يحل لكم أن ترثوا النساء كرها ولا تعضلوهن لتذهبن ببعض ما آتيتهن إلا أن يأتين بفاحشة مبينة وعاشروهن بالمعروف فإن كرهتموهن فعسى أن تكرهوا شيئا ويجعل الله فيه خيرا كثيرا

Transliteration: yā 'ayyuhā l-ladhīna 'āmanū lā yuḥallu la-kum 'an tarithu n-nisā'a kirhan wa-lā ta'dilu-hunna li-tadhhabu bi-ba'di mā 'ataytumu-hunna 'illā 'in ya'ti-yanna bi-fāḥishatin mubayyina, wa- 'āshiru-hunna bil-ma'rūfi fa-'in karahtumu-hunna fa-'asa 'an takrahu shay'an wa- yaj'alu llāhu fī-hi khayran kathīran.

Translation: O ye who believe! Ye are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may take away part of the dower ye have given them,-except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity. If ye take a dislike to them it may be that ye dislike a thing, and Allah brings about through it a great deal of good (Translation by Yusuf Ali).

Therefore, marriage in Islam is not enforced to last until death, but rather divorce is allowed when it is desired or deemed necessary. In this marriage, the prenuptial agreement guarantees the woman many of her Islamic rights which are fair and equitable and can be enforceable by law¹. A Muslim woman can be relinquished should she or her husband claim divorce by adding any number of mutual rights and obligations into the marriage contract. Because nothing is carved in stone, everything can be changed, altered and amended through a certain amount of good will and a sincere desire to live happily ever after (Mills 2007:conclusion).

In Mills' study, there are three major criteria for protection that a prenuptial agreement provides. One of them deals with polygamy, the right of the man to marry up to four women at the same time. In the prenuptial agreement, a woman is allowed to refuse her husband marrying more wives. By doing this, she makes it binding for her husband to consult with her and to abide by her wishes. The other criterion in the prenuptial agreement is the dower, which is often either a fixed financial amount or a property. According to Islamic rights, either some of the dowry or all of it may be deferred until a later time where it would become payable to the wife either upon death or divorce. The third criterion in the prenuptial agreement is divorce. In Islam, divorce is permitted when serious differences arise which cannot be resolved through reconciliation. The bride- to- be can include in the agreement that in cases of non-reconciliation, she can demand divorce with or without the permission of her husband (Mills 2007: Sec. Polygamy & 'Al- Šafi'ī, J. & 'Al- Šarnibāsi, R. 2008: 190- 191)

According to Mills, the role a prenuptial agreement safeguards women's psychological health by placing them at the same level as their spouses. When contracting a marriage, any of the spouses may unilaterally divorce his/her spouse at any time, without specifying any reason; so, a woman has the right to act on an equal basis as her prospective husband as long as she acquires this right. She can do this by negotiating and demanding that the prospective husband delegate to her or her nominated agent the right to divorce him at any time without

assigning any reason. As for child custody after divorce, some modern contracts are reported to specify custodial arrangements to favor the mother. However, most custodial agreements that contradict proscribed automatic transfer of custody to the father are most of the time not enforceable (Mills 2007: Sec. Polygamy).

In the prenuptial agreement there is the element of practicality as the inherent conditions are as enforceable in a court of law as any other conditions in a civil contract. Furthermore, having a bilateral right to divorce will also save both man and woman endless argumentation and bickering that could ultimately lead them to very expensive and emotionally charged court litigation². How far women are ready to go in order to get a divorce is reflected in this incident in Egypt. At a certain point in the past, the Egyptian government passed a law that grants wives divorce without their husband's consent if they are to pay them what remains of the dower. Within only six working days, 3000 women applied for divorce to the courts of Cairo alone (Hasan 2011).

The results of the research that took place in June- July 2011 showed that only one woman, 1 % of the total number of the women, had chosen to sign a prenuptial agreement at the onset of marriage in which divorce was her right as well. Unfortunately, she refused to provide me with the conditions that she had included in her marriage contract. Although 1 % may seem high in a study group of 100, this very indication is in no way representative of the larger population of the Sunni community according to an interview with the above mentioned Judge Nabil Şari, Advisor to the Court of Cassation and Chairman of the Judicial Inspection in the Sunni *Sharī'a* courts in Lebanon.

Indifference to or ignorance about a prenuptial agreement

The reasons behind the decision taken by the women against the signing of a prenuptial agreement are categorized into six groups:

1. Ignorance at the time the marriage contract was signed as they had never been informed about the possibility of such a document. An example of a response from informant A:

Colloquial:

شو هيدا شروط وشروط؟ لا انا ما بفهم هيك. مين ال انو في هيك شروط؟ هيدا طء حنك

Standard Arabic

ما هذا شروط وشروط؟ انا لا افهم هذا . من الذي قال ان مثل هذه الشروط موجودة؟ انه فقط كلام فارغ

Transliteration: mā hādhā, shurūt shurūt? 'anā lā 'afhamu hādhā. mani l-ladhī qāla 'anna mithla hādhīhi l-shurūt mawjūdatan? 'innahu faqaṭ kalāmūn fārighūn.

Translation: What is this, conditions, conditions? I don't understand. Who ever said that such conditions exist? It is just nonsense.

Informant B:

Colloquial:

إذا صار طلاء، بدي بنتي تبريه من كل شي وترجع عل بيت اهلا من دون مشاكل

Standard Arabic:

في حال حصل طلاق، اريد ان تعود ابنتي الى بيت اهلها من دون ان تحصل مشاكل

Transliteration: fī ḥāl ḥaṣal talāq, 'urīdu 'an ta'ūda bnatī 'ilā bayti 'ahli-hā min dūni 'an taḥsala 'ayyatu mashākil.

Translation: In case of divorce, I want my daughter to forfeit all her rights and come back home without any problems.

2. Belief that men are superior to women and that this must not be fought through any legal document due to a conviction that the courts of law would never stand by a woman under any circumstances. A total submission, by them and their daughters, is the only way in a marriage. In this case there is a denial of the existence of rights given to women by Islam in principle and implementation. A response from informant C:

Colloquial Arabic

انحنا عايشين بعالم الرجال. ما فينا، نحنا النسوان انو نعمل شي. افضل شي انو نتايل الواءع ونضلنا ساكتين. ايا شيخ جيعطي المراه حؤوا؟

Standard Arabic

في الواقع، نحن نعيش في عالم يحكمه الرجال. نحن النساء لا نستطيع ان نفعل شيئا في هذا المجال. انه من الافضل ان نتقبل هذا الواقع وان نبقي صامطين. لا يوجد شيخ من الممكن ان يعطي المرأة حقوقها

Transliteration: fī l-wāqī'ī naḥnu na'īshu fī 'ālamīn yaḥkumu-hu r-rijāl. Naḥnu n-nisā' lā nastaṭī'u 'an na'f'ala shay'an fī hādha l-majāl. minā l-'afḍalī 'an nataqabbala hādha l-wāqī' wa-'an nabqa ṣāmiṭat. lā yūjadu shaykhun yumkinu 'an yu'ṭiya l-mar'a ḥuqūqa-ha.

Translation: In fact, we live in a world controlled by men. We women are not able to do anything about it, so it is better that we accept the situation and remain silent. Which judge would give a woman her rights?

Informant D:

Colloquial:

لرجال بيعرفو اكثر منا نسوان. خليهن يتحملو لمسؤلي. اذا صار شي نحن مالنا دخل

Standard Arabic:

الرجال يعلمون بهذه الامور اكثر منا نحن النساء. دعهم يتحملون المسؤولية. في حال حصول اي شيء لن تكون لنا مسؤولية بالامر

Transliteration: 'inna r-rijāla ya'lamūna bi-hādhihi l-'umūr 'akthar minnā nahnu n-nisā'. da'hum yataḥammaluna l-mas'ūliyya. fī ḥālī ḥuṣūlī 'ayyi shay', lan takūna la-nā mas'ūliyya fī l-'amr.

Translation: Men know better in such matters. Let them hold the responsibility. If something wrong does happen, we will not to be blamed.

3. Pressure from the parents either to appease the in-laws who disagree with such an agreement or to keep the husband's self-esteem as such a demand may seem demeaning to the girl. A response from informant E:

Colloquial:

وحت لو هوي ابل، اهلو ماحايئبلو. بابا اللي انو بيصير ضعيف ادامي. وهيدا ما بيجوز للرجال.

Standard Arabic:

و حتى لو هو قبل فلن يقبل اهله. قال لي ابي ان الرجل يخسر رجوليته امامي وهذا لا يجوز للرجل

Transliteration: wa-ḥatta law qabila huwa, fa-lan yaqbala 'ahlu-hu. qāla lī 'abī 'inna r-rajula yakhsaru rujūliyyata-hu 'amām-i wa-hādha lā yajūz li-lrajul.

Translation: Even if he accepts, his parents won't. My father told me that this is not permissible for men. A man would lose his manliness before me and this is not permissible.

4. Agreeing with the prenuptial agreement, but there is fear of objection by the husband to sign such an agreement and him insisting on the courts decisions as the only lawful source of jurisprudence in case of divorce. A response from informant F:

Colloquial:

انا بخاف حط شروط بركي رفض ، بتفرط العملية وما بعود اتزوج، شو بيؤولو الناس؟ لا لا ، يصير يللي بدويصير

Standard Arabic:

انني اخاف ان اضع شروطا لعله يرفض . عندئذ تعطل العملية ولن استطيع الزواج. ماذا سيقولوا الناس؟ لا لا، يحصل ما يحصل

Transliteration: inna-ni 'akhāfu 'an 'aḍa'a shurūtan la'alla-hu yarfuḍ. 'inda'idhin tata'attalu l-'amaliyya, wa-lan 'astaṭī'a z-zawāj. mādhā sayaqūlū n-nās? lā lā, yaḥṣal mā yaḥṣal.

Translation: I am afraid that if I put conditions he will refuse and then the operation will be damaged and I won't be able to get married. What would people say then? No, No, come what may.

Informant G:

Colloquial:

طبعن هيدا اجحاف بحء المرا، بس شوفينا نعمل؟ المرا وضعا كتير مزري، الرجل الو الحء شو ما صار. هيدا مش عدل ابدن

Standard Arabic:

طبعاً انه اجحاف بحق المرأة، ولكن ماذا بإمكاننا ان نفعل؟ وضعنا سيء جداً، الرجل عنده حق التصرف مهما كان على خطأ. ان هذا الوضع لغير عادل على الاطلاق

Transliteration: tab'an 'inna-hu 'ijhāfun bi-ḥaqqi l-mar'a, wa-lākin mādḥā bi-'imkāni-nā 'an naf'al? waḍ'ū-nā sayyi' jiddan. 'ar- rajul 'inda-hu ḥaqqu t-taṣarruf mahmā kāna 'alā khata'. 'inna ḥādha l-waḍ'a la-ghayru 'ādilin 'alā l-'iṭlāq.

Translation: Definitely, this is prejudice against women. But, what can we do? Our condition is pathetic. A man has the right to act regardless of whether he is wrong or not. This situation is not fair at all.

5. Agreeing with the inclusion of a prenuptial agreement in the marriage contract but distrusting the legal system in ensuring the rights as stated in it. A response from informant H:

Colloquial:

انا مع انو المرا تضيف شروط بعقد الزواج بس كيف بدا تحصل حوءها بالمحاكم. هيدا مستحيل وبكلف مصاري كتير. اذن هي هي بشروط او بلا شروط

Standard Arabic:

وافق على ان تضيف المرأة شروط في عقد الزواج، ولكن كيف لها ان تحصل على حقوقها في المحكمة، انه من المستحيل وبكلف اموال طائلة. لذلك يبقى الحال على حاله بشروط او بدونها

Transliteration: 'uwāfiqu 'alā 'an tuḍīfa l-mar'a shurūtan fī 'aqdi z-zawāj, wa-lākin kayfa la-hā 'an taḥṣal 'alā ḥuqūqī-ha fī l-maḥkama. 'innahu la-mīna l-mustaḥīl, wa-yukallifu 'amwālan ṭā'ila. li-dhālika yabqa l-ḥāl 'ala ḥālihi bishurūt 'aw bi-dūniḥā.

Translation: I agree with the addition of conditions to the marriage contract. But, how can she get her rights in the court? It is impossible and it costs a lot of money. Therefore, the situation is the same with or without conditions.

6. Complete confidence in the husband in providing her with what is lawfully hers in case of divorce. A response from informant I:

Colloquial:

نا بعرف انو الانون مجحف بحئي وبعرف كيف استعمل شروط بعقد الزواج، بس انا كنت بحبو كتير وعندي ثقا عميا به وما بتصور انو بصير شي مامنيح بينا

Standard Arabic:

اعرف ان القانون مجحف بحقي واعرف كذلك كيف استطيع ان استعمل شروط في عقد الزواج ولكنني احبه كثيراً وعندي ثقة عمياء به. لا اتصور ان يحصل شيئاً عاطلاً بيننا

Transliteration: 'a'rifu 'anna l-qānūn mujhifun bi-ḥaqqī wa-'a'rifu ka-dhālika kayfa 'asta'milu shurūṭ fī 'aqd z-zawāj wa-lākinnanī 'uḥibbu-hu kathīran wa'indī thiqa 'amyā' bi-hi. Lā 'ataṣawwar'an yaḥṣala shay'an 'āṭilan bayna-nā.

Translation: I know that the law is discriminating against my rights, and I know how to use conditions in the marriage contract. But, I love him very much and I trust him blindly. I don't imagine anything sinister would happen between us in the future.

Informant J:

Colloquial:

انا بحب زوجي وعندي كامل الثقة فيه. لو بدو يعملوا كان عملا

Standard Arabic:

انا احب زوجي، ويوجد عندي كامل الثقة به. اذا اراد ان يتزوج من امرأة اخرى لكان قد فعل ذلك من قبل

Transliteration: anā 'uḥibbu zawjī, wa-'indī kāmel th-thiqa bi-hi, 'idhā 'arāda 'an yatazawwaja min 'imra'a 'ukhrā, lakāna qad fa'ala dhālika min qabl.

Translation: I love him and I have complete confidence in him. If he wanted to marry another woman, he would have done it already.

Unlike all the other groups in the study which included women from all educational backgrounds with at least a high school level, group 2 above stands as distinguished with the fact that all women in it have a low level of education below class 7, age 12. This group consists of the women from the poorest areas in Tripoli.

20% of all interviewed women, mostly among the upper and middle class regions, knew about their rights to include conditions in their marriage contract before they decided to get married; however, none did include them. It was the parents from both sides that took the decision of sealing the contract; with the exception of one case where a woman had eloped. Three of these women had gone through a very difficult time raising lawsuits against their husbands in child custody and divorce in terms of dower payment. All three had to give up their dower in return for consent for a divorce from the husband's side. Other three women claimed that they wouldn't change their status because they live in a world controlled by men and it is their role to accept what men decide in their lives, those of the children and their marriage. Two were refused by the husband to hold the right to demand divorce, and two others gave their rights for a dower in return for an easy and quick divorce process, and two others had left their destiny to chance and to God's will. Most of the women have claimed an inability to overcome tradition in the marriage contract. They were not willing to face

criticism from family and friends. Two others regretted not having sealed a civil marriage according to which each of the spouses, in case of divorce, would automatically receive half of the assets that they own and decide over inheritance among them and child custody.

All of the women included in the study group reflected the desire to commit to a marriage in spite of their perception that their rights were not being protected in it. They expressed this in terms of three aspects the first of which is a desire to avoid pressure exhibited on them by the other members in their communities. The second aspect is expressed in terms of a need to marry before time passes them, before becoming too old to be “marketed”, as expressed by one of my informants. In general, a fear of being shunned by the other members of their community for being single is manifest. This is best expressed in one of the informants' responses.

Colloquial:

انو افضل للوحدى انوتتزوج وبعدين تاكل هم الطلاق
احسن متعنس وتض متروكي لوحدها بين الذئاب

Standard Arabic:

من الافضل ان تتزوج الفتاة وبعد ذلك تفكر بالطلاق. وهذا لكي لا تعنس و ان تبقى وحيدة بين الذئاب

Transliteration: 'annahu mina l-'afḍali 'an tatazawwaja l-fatātu wa-ba'da dhālika tufakkiru bi-ṭ-ṭalāq. wa-hādha li-kay lā tu'anissu wa-tabqā waḥīda bayna dh-dhi'āb

Translation: It is better to be married and deal with divorce when it does come rather than be single and be left out among the wolves of this society”.

By wolves, the woman meant the women in the society who are ready to excommunicate any other woman who is or seems available to their husbands and so jeopardizing their own marriages. Marriage is here perceived as a protection from one's community. As for the third aspect, her rights are sacrificed in the name of love and complete confidence in the husband-to-be. Of the remaining 78 % of the study group, only 8% had claimed a current knowledge of the existence of the right for a prenuptial agreement; while all others, lacked complete awareness of their legal rights. This is surprising since the topic around women's rights in Lebanon is a very recent, active and maturing social issue on the different forms of mass media that broadcast in the country.

According to Judge Nabil Şari, there are certain extreme cases in a man declaring divorce to his wife. A Sunni Muslim man can declare divorce to his wife orally by uttering the mere word of “divorced” once, twice or thrice in the presence of witnesses or without them.

In the absence of witnesses, the wife takes it for granted that she has been divorced, yet she is returned back to the marriage as she can't prove to others that she has been declared divorced. Her children are not admitted as witnesses in the *Sharī'a* courts. Moreover, a man can divorce his wife in absentia without informing her, and it could take years before she is informed about it by the court while the divorce is legally registered in the courts by him. Meanwhile, the husband keeps on receiving the sexual services from his wife that are actually no longer her obligatory duties. According to the judge's experiences in dealing with cases of belated divorce declarations to the legal authorities, the number of women experiencing such situations is high and steadily increasing. As in marriage contracts, no conditions beyond the right of the woman to demand divorce whenever she wishes has ever been registered in the marriage register since the end of World War II with the exception of the marriage of the daughter of Bashīr I- 'Uthmān بشير العثمان, a politician leader in mantiqat 'Akkār منطقة عكار, in the mountainous Northern Region of Lebanon during the French Mandate in Lebanon. This took place in the 1930s when her father refused to approve her marriage unless her husband approved of a number of conditions to be added in her marriage contract. Some of these conditions were: her husband had no right to overnight outside his marital home; he was not allowed to marry another wife and he was not to bring home people she didn't approve of.

Social ignorance

As already shown above, patriarchy has played a very critical role in terms of the submission of women to the wishes of their fathers and brothers in the family of the interlocutors in matters that have had fundamental impact on their lives and on the vulnerability of their marriages. None of the above women has reflected a personal justification against or for the prenuptial agreement. Their unwillingness to sign a prenuptial agreement seems to be the result of a fear factor embedded on the one hand in distrusting the legal system and on the other hand in a reliance on a powerful kinship relation. Women consider that a big loss can be incurred on them by their parents in case they insist on including conditions in the contract. They are at risk of losing their psychological and financial support, expected future provisions should assistance from the family be needed in terms of problems within the procreated nuclear family. Therefore, these women can't but abide by their families' recommendations at the time of marriage. This is further reflected in the fact that almost all of the women in the study group, with the exception of those in the second group, have expressed a wish to inform their daughters about their legal rights within Family Law. One of them said,

Standard Arabic:

لا اريدها ان تفعل هي الا غلط نفسها التي قمت انا بها ، لانني كنت غبية عندما صدقت كلام والدي عندما
اخبروني بحقوقني عند الزواج

Transliteration: lā 'urīdu-hā 'an taf'ala hiyyā l-'aghlāṭ nafsaha l-lati qimtu 'ana bihā. li-
'annanī kuntu ghabiyya 'indamā ṣaddaqtu kalāma wālida-yya 'indama 'akhbarū-ni bi-ḥuqūqi
'inda z-zawāj.

Translation: I don't want her (her eldest daughter) to make the same mistakes I made, because I was foolish enough to have believed in what my parents told me then about my rights in marriage.

The same informant further expressed her wishes for her daughter's security in marriage:

Colloquial:

انا بتمنى انو بنتي تتعلم وتتعلم حوئها الدينيه لحتا تقدر تعرف كيف تتصرف وئت بدا تتزوج . هذا اذا فيها في هذا المجتمع

Standard Arabic:

اتمنى ان تتعلم ابنتي وان تتعلم حقوقها الدينية لكي تستطيع ان تتصرف عندما تريد ان تتزوج. هذا اذا كان باستطاعتها في
هذا المجتمع

Transliteration: 'atamannā 'an tata'allam 'ibna-tī wa-'an tata'allam ḥuqūqa-hā d-dīniyya li-
kay tastaṭī'u 'an tataṣarraf 'indamā turīdu 'an tatazawwaj. Hādhā 'idhā kāna bi-'istiṭā'ati-hā fī
hādhā l-mujtama'.

Translation:

I hope my daughter will go to school (high education) and learn about her religious rights so that she is ready to act when her time to get married comes. That is if she can in this society.

According to an interview with Mrs. Huda Salhab, a defense lawyer, there are two types of approaches to marriages by the parents. The first one is the conventional marriage or the traditional marriage according to which marrying off a daughter is considered an investment for her family's economic security or as a social investment in enhancing and further establishing her family's prestige. This marriage is to be maintained under any circumstances including the sacrifice of the girl's happiness and her basic human rights. In both cases, a prenuptial agreement may put the marriage at risk and hence is kept away from the formula of the marriage contract. Such conditions and their existence that are added in a marriage contract to protect the rights of the prospective bride are kept concealed from her and are not open for discussion. This is perceived as the best insurance for the marriage and its objective, one way or the other. Hence, the girl is not allowed to return home to her parents, and divorce is out of the question under the acclamation that the husband is her sole protector and supporter. This is best expressed to the girl in a repetitive manner with

Colloquial:

زوجك تاج راسك. وعلى بيت اهلك ما الك رجعا

Standard Arabic:

زوجك تاج على راسك، لن تعودى الى منزل اهلك مهما حصل

Transliteration: zawja-ki tājan 'alá ra'si-ki, l-an ta'ūdī 'ilá manzili 'ahlikī mahmā ḥaṣal.

Translation: Your husband is a crown on your head. You shall never return to your parents' house no matter what happens.

As for the other approach, it is based on the conviction and understanding of both parents and their daughters that marriage is an institution to be established and maintained by two equal persons. The prospective bride is made aware of her legal and social rights by her parents. In this case, she is not used as a bargain in the marriage deal but is part of it. A prenuptial agreement seems to be the best way to ensure her rights as an equal partner to her husband.

In her article "*Gender- Relevant legal Change in Lebanon*", Shehadeh introduces the concept of "femme couverte", the covered woman, which is a term borrowed from the Nineteenth Century western law of *couverture*, which is defined literally as "cover or shelter". It is actually a legal precept that considers husband and wife as a single entity represented by the husband, proclaiming the wife as the property of her husband, whose rights over her are unlimited. According to the personal status codes, marriage in Lebanon is legally defined as a bilateral contract concluded in public and constituting the agreement of the couple to live together for the sake of procreation and cooperation. But on closer examination of the personal status codes, marriage is revealed to be in practice a contract between two unequal partners: a husband who provides for the material needs of the family at the same time assuming the position of the head of the wife and family, and a wife who is expected to be obedient in providing her husband with sexual pleasure, children, and housekeeping (Shehadeh 2010: 215- 216).

Finally, within the study group across its old and current generations, across its educational levels and socioeconomic backgrounds, women have reflected a phenomenon referred to by both Judge Sari and Huda Salhab as a social ignorance *الجهل الاجتماعي* aj-jahlu l-'ijtimā'ī, which is described as a lack of awareness of one's cultural rights and obligations. This contradicts one of Nazir's claims in the rarity of the usage of a prenuptial agreement. According to her, Muslim women can theoretically achieve equal rights in their marriages through the conditions that they can add to the marriage contract in such a way that their rights are maintained within a legal framework. However, in Lebanon these rights are rarely utilized, and there are two factors behind this, according to Nazir:

One is illiteracy and the other is the patriarchal social traditions under which it is the prerogative of the bride's male guardians to finalize the conditions of the marriage contract (Nazir 2011: 37).

Although this prerogative did play a major role in the final decisions taken or not taken by the women in the study group in terms of the prenuptial agreement, none of them was illiterate and the levels of education among the women varied from grade 7 to a Master's Degree. Nazir's claim that illiteracy has a great impact on women in playing a critical role in limiting their knowledge and awareness of their legal rights, both civil and religious, seems to be insufficient in terms of the results reached. This study reflects that while it might be true for illiterate women, it is social ignorance among women that seems to be of a greater effect in determining the acquisition of legal knowledge and awareness among the women of Tripoli across generations, educational levels and socioeconomic backgrounds³.

Chapter IV: Theoretical Background

Regional look at the differentiation between men and women's religious rights in the Sharī'a laws in the Middle East region

In this section, I present the conditions of gender differentiation in the region of the Middle East in general and in Family Law in Muslim *Sharī'a* courts in particular based on the argument presented by Sameena Nazir. As Director of IHRLG's Pakistan Program, International Human Rights Law Group, Sameena Nazir is responsible for developing and implementing IHRLG projects in the region. Ms. Nazir is a Pakistani-American human rights advocate who has worked extensively on NGO capacity-building, particularly through the development and implementation of training programs centered on issues of empowerment. Her long-standing area of specialization is women's human rights and Islam⁷.

According to Sameena Nazir, in her study *Challenging Inequality: Obstacles and Opportunities Towards Women's Rights in the Middle East and North Africa*, "As the societies of the Arab Middle East and North Africa (MENA) confront the process of democratic change, no issue offers a more formidable challenge than the unequal status of women" (Nazir 2005: 1). By this, Sameena argues these differences to be discriminating against women's rights in the region.

... how women in the Mena Countries face systematic discrimination in both law and customs. As a consequence, women don't enjoy equal rights as citizens, or do they have a full, independent legal identity (Nazir 2005:2).

The state of women's rights in 16 countries and one territory-Palestine-of the MENA region, including countries from North Africa, the Levant, the Gulf, and the Arabian Peninsula, has proved to be in progress toward gender equality. However, a pervasive, gender-based gap in rights and freedoms is still visible in these countries. A substantial deficit in women's rights exists in every country that Nazir had reviewed in her study and is reflected in practically every institution of society: the law, the criminal justice system, the economy, education, health care, and the media. As a repercussion of this practiced inequality, women were found to have unequal rights as citizens, without a full, independent legal identity (Nazir 2005:5).

Nazir notices that the constitutions of most Middle Eastern countries include a clause that guarantees the equality of all citizens regardless of their sex, and these include Algeria,

Bahrain, Iraq, Libya, Oman, Palestinian Authority, Qatar, Syria, and Tunisia. However, Egypt, Jordan, Lebanon, Kuwait, Morocco, the UAE, and Yemen do not include a gender-based nondiscrimination clause in their constitutions. Interestingly enough, it is Saudi Arabia the only country in the region whose constitution does not include a clause or statement committing the government to a policy of nondiscrimination (Nazir 2005: 5).

Nazir argues that women not only confront obstacles in their societies, but their status is affected by national, regional, and global political developments. This is in addition to the emergence of extremist Islamic forces in the region that stands as a threat to the gains women have achieved as well as to future possibilities of reform in their favor. Nevertheless, there is the strong impact of the politicization of Islam that has critically complicated the challenge of advocating for equal rights between men and women (Nazir 2005:3).

In her study, Nazir says that in no country in the region are women given equal status in the citizenship laws. In the majority of countries, by law, women are susceptible to harsher penalties than men are when charged with the same crime moral crimes. The legal codes provide no serious protection for women against violence within the family and treat a woman's testimony as worth less than a man's in cases in which rape or domestic violence is brought before the legal authorities if they are ever. In many countries, the family codes extend to the husband the status of head of household the husband whose responsibility is to provide financially for his family and this gives him enlarged social and legal authority over his wife and the right to demand obedience from her (Nazir 2005:5- 6).

According to Nazir, gender differentiation revealed in the Middle East Region is mostly felt in the women's status in the Family Laws of each country. Throughout the region, legal matters related to family relationships are administered by the *Shari'a* systems (courts) which are based on Islamic laws. In these systems, marriage, divorce, custody, and women's legal status are dealt with under what is commonly referred to as the family code or Personal Status Law. Tunisia, Morocco and Egypt have recently expanded women's rights in their personal status codes including the rights to divorce and transfer of the mother's citizenship to her children from a marriage with an alien citizen. Furthermore, *Shari'a* courts have interpreted these laws in order to deny legal protection to women whose husbands have forbidden them to work outside the house. The differentiation practiced in these courts is also obvious in that a husband can divorce his wife at any time without stated reason and without

going to court but a wife is required to meet specific conditions in order to initiate a divorce in a court of law (Nazir 2005: 8-9).

Furthermore, Nazir's study reflects on how many women suffer from a lack of awareness of their legal rights under the country's family law. A major element in my project is the study of this awareness among the Lebanese women and the factors that are playing in determining the conditions under which these women can use these rights. Under Muslim family law, the marriage contract generally contains a section that allows each spouse to stipulate in writing his or her specific rights in the marriage. This feature gives women the theoretical ability to achieve equal rights within the marriage. In practice, however, Nazir claims that,

this feature of the marriage contract is seldom utilized, either due to illiteracy or lack of familiarity with the available legal options or due to patriarchal social traditions under which it is the prerogative of the bride's male guardians to finalize the conditions of the marriage contract. In this perspective, it is obvious that governments in most of these countries do not engage in public education campaigns on women's rights in the marriage (Nazir 2005:11-12).

A look at the factors that have led to the insistence of the differentiation between men and women's religious rights in the Shari'a Laws in Lebanon that have played a critical role in the failure of women to use a prenuptial agreement

Lina Khatib elaborates on three categories of policies that intensify the differentiation between the rights of men and women in Lebanon (Khatib 2008). The first one includes the policies which are aimed particularly at women; the second category includes those policies which deal with relations between men and women; and the third category makes up the general policies which are supposedly gender neutral but which have a different impact on men and women.

In point C in the preamble of the Lebanese Constitution, the following is stated,

Standard Arabic text:

لبنان جمهورية ديمقراطية برلمانية، تقوم على احترام الحريات العامة وفي طبيعتها حرية الرأي والمعتقد، وعلى العدالة الاجتماعية والمساواة في الحقوق والواجبات بين جميع المواطنين دون تمايز أو تفضيل

Transliteration: lubnān jumhuriyya dimuqrātiyya barlamāniyya, taqūmu 'alā 'iḥtirām l-ḥurriyyāt l-'āmmat wa-fī ṭalī'ati-hā ḥyriyyatu r-ra'iy wa-l-mu'taqad, wa-'alā l-'adālati l-'ijtimā'iyya wa-l-mūsāwāt fī l-ḥuqūq wa-l-wājibāt bayna jamī' l-mūwāṭinīn dūna tamayyuz 'aw tafḍīl.

Translation: Lebanon is a parliamentary democratic republic based on respect for public liberties, especially the freedom of opinion and belief, and respect for social justice and equality of rights and duties among all citizens without discrimination or partiality.

As for article 7 of the Lebanese Constitution, it states that,

Standard Arabic text:

كل اللبنانيين سواء لدى القانون وهم يتمتعون بالسواء بالحقوق المدنية والسياسية ويتحملون الفرائض والواجبات العامة دون ما فرق بينهم

Tranliteration: kulla l-lubāniyyun siwā'an lidá l-qānūn wa-hum yatamatta'ūna bi-s-siwā' bi-l-ḥuqūqi 'almadaniyya wa-s-siyāsiyya wa-yataḥammalūn l-farā'ida wa-l-wājibāt l-āmma dūna mā farq bayna-hum.

Translation: All Lebanese are equal before the law. They equally enjoy civil and political rights and are equally bound by public obligations and duties without any distinction.

Both above points of the Constitution assert that all Lebanese are equal under the law and that they enjoy equality in civil and political rights and they assume duties and responsibilities without any difference between them. Hence, Lebanon is a democratic state where the constitution grants all its citizens equal rights. However, while the civil code grants equality for all its citizens, the Personal Status Laws, within citizenship, and family status laws, which regulate gender relationships, contradict all the basic legal principles of equality and non-discrimination. This reflects the institutionalization of discrimination in a de facto form rather than a legal one (Khatib 2008: 450).

According to Sameena Nazir, the absence of special commissions or legal entities to enforce legal protections against gender legal inequity reflects a lack of interest in women's rights on the part of government officials. It also reinforces women's inferior status in society and allows violations of their rights to take place with impunity (Nazir 2011: 37). According to an article presented in the Daily Star in 2010 by Dalila Mahdawi, Lebanese women enjoy the fourth greatest degree of freedom in the Middle East and North Africa after Tunisia, Morocco and Algeria. Researches in 18 countries in the region conducted hundreds of interviews with women to assess whether progress in their rights has been made during the last few decades. Research shows that Lebanese women have weak and limited developments in their access to justice, autonomy, and economic, political, social and cultural rights. These weak developments were in the fields of education, labor participation as well as participation in the parliamentary elections as voters. There has been a substantial increase in the number of women working in the Lebanese judiciary where women currently account for 38 percent

of judges in the civil, commercial and criminal courts, and 28 percent of judges in the administrative courts. Moreover, The Lebanese government has introduced some reforms including the amendments that were made in 2000 to some discriminatory provisions within the labor and social security codes. In the labor law, the following articles were amended on 26th May of 2000: 26, 29, 29 and 52. These include equal rights and duties to all male and female workers both at work and within the social security¹.

It also established the Women and Children's Rights Commission in 2005. In a government's ministerial statement in 2005, the need to address women's rights was also expressed, reflecting a shift in the government's attitude on gender discrimination from indifference to active engagement (Mahdawi 2010). Hence, Lebanon still has a long way to go towards equality among its people.

A look at the factors that have led to the insistence of the differentiation between men and women's religious rights in the Shari'a Laws in Lebanon that have played a critical role in the failure of women to use a prenuptial agreement

In order to survey the situation in Lebanon, the arguments presented by Suad Joseph and Rania Maktabi in this perspective are elaborated. Suad Joseph, a professor of Anthropology & Women's Studies at the University of California, Davies, has done a lot of anthropological field research that have focused on her native country of Lebanon. Her work investigated the politicization of religious sects in Lebanon, questions of ethnicity and state, local community organization and development, considering the impact of women's visiting networks on local and national politics, and the relationships between local communities, community organizations and the state. Focusing on gender, Joseph developed a long-term research program on the interface of gender, family and state in Lebanon. As for Rania Maktabi, an assistant Professor at the Faculty of Business, Social Sciences and Foreign Languages at Østfold University in Norway, she has been involved in research pertaining to Family Law in the Sharia courts, citizenship and State-Building in the Middle East and in Lebanon particularly.

According to the research that has been conducted by Joseph and Maktabi, the Muslim *Shari'a* courts in Lebanon seem to reflect a similar condition as that of the rest of the region in terms of differentiation of the rights of men and women in Family Law as argued by Nazir. Both argue the factors that are typical to Lebanon within the above mentioned perspectives

and use the concept of the gendering of the *Sharī'a* laws. Rania Maktabi in her study, *Law and Gendered Citizenship in the Middle East: Path of reform and resilience in Egypt, Morocco, Syria and Lebanon*, argues that the strength of the religious institutions in Lebanon and the overlapping of the public and the private status of the citizens of Lebanon as having a fundamental impact on gender differentiation in terms of their religious legal rights. According to her, this is reflected in the inherent incompatibility between the state's constitution in which citizens are granted equal rights and duties and the state's gendered laws which are reflected in both the citizenship laws and the family laws. Furthermore in her argument, Rania Maktabi approaches this type of gender differentiation as an aspect related to a further distinction between the civil rights that are individually based and those that are group-based (Maktabi 2009: 1).

Suad Joseph's argument is best represented in her book *Gendering Citizenship in Lebanon*, which is a part of the Middle East, in which she refers to the differentiation between the religious rights of women and those of men in terms of gendered laws.

Usually covering the regulation of marriage, divorce, child custody and inheritance, family law has been a critical site for the gendering of citizenship in the Middle East countries (Joseph 2000: 20).

Joseph attempts to understand the intertwining factors behind the family law differentiating between the rights of men and those of women, claims that citizenship is a combination of cultural, political and legal processes. The political processes, including the determination of the rights and obligations of the citizen subjects in relation to the state, are the ones that determine the precedents for citizenship in a state. The legal processes in turn limit the practices of citizenship through the citizenship laws. As for the cultural processes, they are the ones that contribute to the making of the citizen. Although classical political thinkers are involved in homogenized abstractions rendering the citizen to become neutral in gender in terms of race, class, ethnicity and sexuality, Joseph introduces the impact of the above mentioned processes on the existing differentiated status between men and women experienced in the laws and practices that are underlined by the masculine citizen in Lebanon.

All of the states of the region were molded, mostly in the Twentieth Century, out of the ashes of empires that joined various parts of the region (Joseph 2000: 5).

She claims that this was done in terms of the time Lebanon was under colonization by the Ottomans and later by the French who have influenced the development of the judicial, political and social institutions in Lebanon. A critical role has also been played by the local forces that have been active in absorbing and resisting the local and the international influences that the Middle Eastern States, including Lebanon, have been exposed to in the 19th Century and early 20th Century. These elements, combined with the designation of the European states and scholars of the Middle Eastern Region, have turned the region into a field for furthering the building of their own states and national projects. Over time, most of the Middle Eastern states have experienced changes in their boundaries, and have experienced an exchange of people among them. A harbor for many religions, Islam, Judaism and Christianity in addition to numerous smaller religious cultures and institutions, the region has undergone a gendering of laws and practices particularly those relevant to Islam. The different sects of Islam have been observed to continually transform their own laws and practices actuated by the internal and external factors the region has been exposed to, leaving their impacts on the Lebanese existence (Joseph 2000: 5). Therefore, the region has gone through a diffusion of ideas as a result of the heavy traffic of people that has taken place over the centuries accumulating in the character of the region with overlapping imprints economically, politically and culturally. This traffic has been further enhanced as a consequence of the rapid development in regional trade, tourism and media. Joseph considers that the nation-building project of Lebanon, the formation of its state, the dominating Muslim religion and the controversy between the principles of Islam and *Sharī'a* as practiced today, as well as the extended close-knit family have had profound influence on initiating and maintaining gender discrimination in Lebanon through its citizenship laws and family laws (Joseph 2000:20- 25).

Rania Maktabi in her study, *Law and Gendered Citizenship in the Middle East: Path of reform and resilience in Egypt, Morocco, Syria and Lebanon*, considers the strength of the religious institutions in Lebanon and the overlapping of the public and the private status of the citizens of Lebanon as having a fundamental impact on gender discrimination. This is reflected in the inherent incompatibility between the state's constitution in which citizens are granted equal rights and duties and the state's gendered laws which are reflected in both the citizenship laws and the family laws. Rania Maktabi approaches gender differentiation as an aspect related to a further distinction between the civil rights that are individually based and those that are group- based (Maktabi 2009: 1).

Chapter V: The role of kinship in initiating and maintaining a gender- structured relation within the family network

The “civic myth”

In the concept of “civic myths”, individual persons form a people within a political community. Accordingly, this origination is elaborated together with the criteria and the reasons for eligibility for membership in this people, and the values and aims of the community are defined as well. These myths, which are framed with contradictions and conflicting themes, are codified in citizenship laws and they work through informal agreements as well. It is these agreements that are constitutive of the nature of the political community and are perceived to possess a legal status (Smith 2007 ext. Joseph, 2002: 107). In Lebanon, Suad Joseph argues that there is a manifold of such civic myths which support and challenge each other. This is reflected in the divergent themes in the citizenship laws reflected in the existing competing or compatible national narratives. These myths manifest themselves in different legal arenas including economic liberalism, social conservatism, communalism, and individualism, autonomy of the state and religion, the primacy of patriarchal authority, sectarian pluralism and extended kinship (Joseph 2000: 108)

Joseph, in her book *Gender and Citizenship in the Middle East*, approaches kinship as a civil myth which is fundamental to communities with history, coherent rules of membership, and codes of behavior, moral dictation of rights and responsibilities as well as with disciplinary powers to enforce their codes. In the case of Lebanon, the process of the recruitment of community members takes place on the basis of naturalization of an imagined biologically based system of recruitment. Accordingly, the communities are upheld by the power of nature sanctified by the authority of God and are assimilated into and institutionalized by the laws and practices of citizenship. Because these laws and practices are framed within contradictions, the kinship myths follow suit in being contradictory (Joseph 2000: 125).

In Lebanon, according to Joseph, the myth of civic kinship is that of the extended family. It is concealed and hegemonic as well as subsidized by the state and sanctified further by the religion. So, the picture of the country is composed of natural groupings based on biological relatedness through blood that has descended through male genealogies. This has contributed to a great extent in the “disenfranchising of women and juniors” within the

operations of the differentiation between care and control (Joseph 2000:108). This differentiation is supported by the state and the religious sects. It is in this context that women have been exposed to two significant processes which have eventually resulted in a citizenship of a lesser strength and value, a second class citizen.

Joseph argues that when the members of the extended family assimilate the structures of patriarchal kin authority and standards of their behavior through the distinction of their care and control duties assuming the role of the state,

Kinship group [are then] seen as primordial, existing before the state, bequeathing their members their primary identities, and claiming the a priori allegiance of their members (Joseph 2000: 109).

This comes as a response to a number of conditions the first of which is a weak state, unreliable and unable to protect its citizens from the insecurities they face socially, economically and politically. Another condition is how the citizens view the state as a negative agent within their social context because the interests of the politicians are perceived as limited only to the extraction of the country's resources which they use for their own advantage. This necessitates a further protection of the citizens against the state's arbitrariness and corruption resulting in the codification of the control of extended family groups over their own members, especially women and juniors that are deprived of the political society (Joseph 2000: 18). A third condition lies in the plurality of religion in Lebanon and to the political system and governance which is dependent on a sectarian plurality as well. This plurality has formed an obstacle against gender equality in the absence of a unified civil family code which is indispensable for its achievement. In this context, the state has relied upon legal pluralism in order to support the extended family system as central to the structure of its control over the citizenry inscribing the discipline of the extended kinship in citizen laws and practices (Joseph 2000: 129- 132).

The kin contract

In her book mentioned above, Suad Joseph introduces the "kin contract" as a concept based on the ideal of family love that is organized within a patriarchal structure of rights and responsibilities. This ideal is circumscribed around the unconditional sacrifices of both parents for the sake of their children, the abiding respect of the children for their parents, love among siblings and the love and respect to the grandparents, uncles, aunts and cousins. These relations have a determining character in one's social identity, economic stability, political

security and religious affiliation. Nevertheless, they also form the first and the last line of emotional, social, economic and political security against the irrevocable rights of the state and against the religiously mandate moral responsibilities (Joseph 2000: 116).

Furthermore in the same book, Joseph argues that the social identity of the Lebanese is defined through kinship genealogies within a national cartographic practice in which close and far extended family members are included. These genealogies are characterized by many aspects the first of which includes the following criteria: men are coded as the primary ancestors; rights and responsibilities are defined patrilineally; longevity; and history is documented through written and oral accounts of the kin group. This is best reflected in the proverb that is often heard and repeated among the Lebanese:

Colloquial:

انا ضد اخوي، انا واخوي ضد ابن عمي، وانا وابن عمي على الجيران

Standard Arabic:

انا ضد اخي، انا واخي ضد ابن عمي، انا وابن عمي ضد الجيران

Transliteration: 'anā ḍidd 'akhī, 'anā wa-'akhī ḍidd 'ibnu 'ammī, 'anā wa-bnu 'ammī ḍidd j-jīrān.

Translation: I against my brother, my brother and I against my cousin, my cousin and I against the neighbors.

Another aspect is the supremacy of kinship over the conjugal relationship of the women in the family as a result of an antagonism that exists between the natal kin, presumed to be strong in intensity, and the relationship between husband and wife, presumed to be relatively weaker than that of the natal kin. It is in this context that men in the extended patrilineal family including fathers, brothers, paternal grandparents and uncles are considered to be more responsible for the behavior of the women in the family than their husbands are. In addition, they are the ones women are to return to in times of crisis within their procreative families. A third aspect in the formation of one's social identity is an observed endogamy, both patrilineal and matrilineal. It is favored by the practices of the family and further reinforced by the dictation of the children's religious affiliation. Children are presumed to belong to the paternal kin group and hence automatically assume this group's religious affiliation, not forgetting that the religious sects in the country support the authority of the males and elders over females and juniors (Joseph 2000: 114- 116).

In providing economic security for the different members, Joseph argues that the kin group plays a very critical role through the process of intra-marriage whereby children are

married off to close or far cousins belonging to the same group as if they are common property. Furthermore, there is another element that plays an important role in enriching the male in the family: he is awarded inherited property by the sisters in return for future care. It is in this context that women are willing to give up their inheritance which they are entitled to and give it to the brother who is expected to provide the needed economic security when that is required. The third element is the justification of this act in the claim of keeping the property in the father's line. These elements contribute in furthering inequality among the sisters and brothers as the brothers get richer and hence their economic superiority over the sisters is maintained. It is quite remarkable how women within their kin group contribute consciously, willingly or not, to their own discrimination in return for the favors they anticipate from the males in their natal family rather than from the husbands who are legally responsible for them. In this regard, family associations are increasingly being established in order to provide economic assistance when needed by the members of the family in the form of loans, financial aids, networking and political connections. These associations operate with the essence of helping the less fortunate members in a manner similar to the operations of a non-governmental organization providing the civil society with the services that the state does not provide them with (Joseph 2000: 119- 121).

Authority determined by age and gender

As for the control element of kinship, Joseph argues that kin groups in Lebanon are organized along gendered and aged structures of authority which are themselves legitimated by the religious authority. This is done in a context where social control comes through the exercise of extended patriarchal kinship which rationalizes the privileges of males and seniors through the idioms and moralities sanctioned by religion. Therefore, in addition to its nurturing aspect, kinship is accepted as the structures of patriarchal authority used by the weak Lebanese state in constructing the political order of the state and the constitution of citizenship. The result is an institution of governance based on the assimilation of the logic of kinship in the making of the state in which the citizens are constituted (Joseph 2000: 121-125).

In addition, because Lebanon lacks a state of law based on rules, relationships determine access to resources, in such a way that this access is dependent on how the set of relationalities *wāsitah*/واسطة, based in kinship are situated. The better it is situated, the easier is the access of the citizen to state and other public resources. Hence, kin is the basis of

networks, the brokerage and the patron/ client relations with the state. As a result of this process, public morality is decreased because little interest is turned to making leaders or the state itself accountable to the citizens or to making these loyal and accountable to the state beyond the morality of the highly personalized relationships that are legitimated by the kin moralities. Political leaders in Lebanon use words like my son *ibnī*/ ابني, my sister *ukhtī*/ اختي and uncle 'ammī/ عمي as idioms and codes of kinship morality in order to foster their relationships with their followers and in order to evoke their loyalty which is paid for by the provision of a share of the extracted state resources and services that the citizens are entitled to otherwise (Joseph 1994: 278-279).

According to Joseph, the relationships mentioned in the above paragraph are limited to within a sect rather than across sects, and that the citizen claims go through the personalized agencies rather than through religious agencies diminishing and sometimes eliminating these as valid agencies. The nature of the different political parties in Lebanon reflects this phenomenon. These parties are not differentiated according to differences in sectarian interests. Each party's existence is based on followers, who can be from different sects, whose loyalty to the party is circumscribed around the personalized patronage relationships. It is in this context that competition among the parties is based on the competition among their leaders in claiming the personal loyalty of the followers. Because the kin groups to which these followers belong tend to be of the same sect, their mobilization within the political party is easily interpreted as having a sectarian consistency. It is here that Joseph claims that the stronger the relation within the political party is between the leaders and the kin group, the stronger it is for the kin to establish itself within the hierarchy of social control order. Since the points of contact in such relationships take place through men and the elders, these have gained more control over women and juniors in taking control over the channeling of their claims to the leaders (Joseph 2000: 28).

According to Dima Dabbous, the Director of the Institute for Women's Studies in the Arab World at the Lebanese American University:

Both Lebanese women and men in general lack political agency in a country where confessionalism and not party politics determine the parameters of political involvement. In other words, both genders suffer exclusion from political life in a political culture where parties with clear issue-oriented platforms basically do not exist, where clientelism, patronage, and not meritocracy largely determine who has access to positions of power inside existing parties or in the larger political institutions of the country, and

where one's confessional identity is the single most important factor in determining one's role in society and which side (Khatib 2008: 449).

In her book, Joseph continues in claiming that patriarchy within the kin group has led to the structure of governance in which both age and gender of the members are hierarchically classified within authority. Patriarchy within the kin group has also contributed to directing loyalty to the kin rather than to the state in dedicating control and responsibility between men and women and between seniors and juniors. This takes place in a context in which the members have the obligation to answer to an authority that is expected to be obeyed creating a disproportionate relationship in the extended patriarchal kin system in Lebanon. So the state has privileged the family over the individual legally and has also represented the family as something a priori and a pre- political which has permeated all domains and spheres of life- private/ public, state/ civil, society/ kinship, governmental/ non- governmental/ domestic- allowing kin- based patriarchy to be transported into political, economic, social and religiously driving forces (Joseph 2000: 18-19).

Chapter VI: Gender differentiation in the nation- building project

The “imagined community”

A nation is an imaginary community in which members hold in their minds a mental image of their affinity to one same nation. They may have similar interests to identify themselves as part of the same nation in spite of the fact that it is very unlikely that these members will ever know one another face to face (Anderson 1983: ext. Joseph 2000: 5). Women play a critical role in forming unified communities, nations, in which people are highly diversified along national, religious, ethnic, tribal, linguistic, regional and class differences. There is ambiguity in boundaries across these differences as a result of the removal of the principles of the Lebanese Constitution and the citizen rights embodied in it from the daily experience of life where relationships with the state and state officials correspond little if any to the Lebanese Constitution discourse of rights. According to Joseph, this has come about because of the impact of cultural and gender systems in the production of the unequal relationships of Arab women and men in the laws and practices of citizenship. In order to better conceive how this has been achieved, it is important to first define citizenship. According to Joseph, citizenship consists of the legal processes by which subjects of a state are defined. These processes set out the criteria for citizenship and the rights and obligations of citizens in relation to the state (Joseph 2000: 5).

Citizenship is also a set of legal, political, economic, and cultural practices that are different from the written laws though influenced by them in generating social processes by which subjects are made, invented and constructed (Joseph 1994: 275)). Joseph further claims that citizenship refers to the citizen in terms of an abstract person, neutral in cultural and gender terms. Although constitutions and laws are written in terms of this abstract citizen, citizenship in most countries of the world has been a highly gendered enterprise, in practice and on paper concealing inequalities or an attempt to justify them on the basis of family, religion, history or other cultural terms. As for the citizenship in Lebanon, it has been privileged and mandated to the masculine citizen, and this has automatically led to the gendering of citizenship (Joseph 2000: 128).

Lebanon seen as an imagined community has used the woman as a critical symbol in inventing its notions of itself creating a place of belonging, a home, a community of kinship and a safe haven for family in order to overcome internal differences. Women are imagined to be an authentication of the nation, by providing the place of belonging in which one focuses on the safety of the family and the kin which is embedded in the concept of the home. Hence,

the woman has become a symbol and an actor in the struggle for national identity in the modern nation-building project of Lebanon (Joseph 2000: 6).

A woman to the nation as a man to the state

The symbolic connection between the idea of a woman and the idea of a nation and the use of women as symbols of nations has had a great influence on the process of the gendering of women's membership in national communities. The woman, being categorized into her own class, symbolic of the nation, has been observed to characterize national boundaries which emanate and impose forms of behavioral control on women in the name of the nation, of liberation, of progress, and of God. This is mostly observed in two situations. The first one takes place in the attempt to justify modern reforms by locating women in the tradition. This has resulted in women becoming trapped in the traditions that are aimed at being transformed. The second situation is in the resistance movements, particularly political Islamic movements who have also used women for imagining their political communities. By tying their visions of the ideal political community to women's dress or sense of behavior, however, they have limited the possibilities of women's equal citizenship (Joseph 2000: 6).

Resistance Islamic movements have used the bodies and behavior of women in order to imagine their struggle against other nations especially the dominant ones. Islam and modernity are not merely compatible but actually go hand-in-hand reflecting an Islamic community and attempting to articulate how an alternative modernity may be constructed by Shiite Muslims who consider themselves simultaneously deeply modern, cosmopolitan, and pious. As a result of their visibility both within the community and in relation to Western ideas that link the status of women to modernity, women are central in the depiction of a Shiite Muslim community that identifies with Hizbu llāh حزب الله, a Shi'it political party, and the neighborhoods of al-Dāhiya الضاحية in Beirut, the Southern Suburb. It is in this condition that Lara Deeb has examined the ways individual and collective expressions and understandings of piety have been debated, contested, and reformulated. The production of the engendering of women's membership in the national community has eventually materialized in the imposition of different forms of bodily disciplines and control over the behavior of women allowed in the name of the nation, the liberation, the progress and in the name of God with the image of the woman being domesticated and so maintaining the sacred family as the veritable essence of the nation (Deeb 2006: 205- 206). In Lebanon where structures and ideologies of patriarchy are fundamental, women have become captive and their role is distinctive as the mother of the nation while that of men is the father of the nation.

With the reproduction of this engendered hierarchy, gendered citizenship has been institutionalized in the state building project of Lebanon (Joseph 2000: 16)

The idea of the domesticated woman has been reproduced in political treatises, manuals and advice literature from the earliest Nineteenth and Twentieth Century nation-building projects of the Middle East region where these constructs of the nation are implicit and explicit constructs of patriarchy. As women and motherhood are used as icons of the nation, they become captive to these constructs, particularly when men and fatherhood are associated with the state (Joseph 2000: 116). Furthermore, according to Sara Ruddick, the association of motherhood with the nation and the association of fatherhood with the state is dangerous practice since when it is coupled with the real power that a man already processes, he can intrude, humiliate, exploit, and assault women. The political ideas of fatherhood and motherhood are used to judge and to exclude women:

The linkage of woman/mother to the nation and man/father to the state continue reinforcing the production of gendered hierarchy and facilitating the institutionalization of gendered citizenship in state-building projects (Ruddick 1997: 213).

The effect of the 1975 Civil War on the imagined community

The Civil War that took place in 1975 in Lebanon has had further effect on the differentiation between men and women's rights. It is argued that this Civil War has additionally reinforced sectarianism as well as the division of the population along confessional lines that have further confused the evolution of social integration (Khatib 2008: 438). These lines have weakened civil institutions which eventually became polarized. Large segments of the Lebanese population lived through the war segregated from communities from other sects and despite attempts during the Cedar Revolution of 2005 to foster a sense of national identity in Lebanon,

The country remains a fragile one when it comes to its population's national imagination. This imagination is almost non-existent, with quasi-tribal loyalties to the kin, the clan and the sectarian community remaining stronger than those towards the nation (Khatib 2008: 449).

According to Khatib, it is this atmosphere of division that has had an indirect effect on women and men and on how women and men conceive themselves as citizens of a nation when the notion of citizenship itself is being continuously contested by competing loyalties.

Chapter VII: Gender differentiation in the citizenship laws

The creation of the citizen in Lebanon has been affected by a number of factors. Being a creation of the Twentieth Century politics,

All of the states of the region [Middle East] were molded, mostly in the Twentieth Century, out of ashes of empires that joined various parts of the region (Joseph 2000: 5).

These states, including Lebanon, have been burdened with the juridical, political and social institutional patterns and markings of the colonizing or occupying powers. In addition, the region has gone through a diffusion of ideas as a result of the heavy traffic of people that has taken place throughout the centuries culminating in the character of the region with overlapping imprints economically, politically and culturally. This traffic has been further enhanced as a consequence of the rapid development in regional trade, tourism and media as well as of the influence parents have had on their children's citizenship formation (Joseph 2000: 5)

The role of foreign control on the formation of the citizenship laws

The Lebanese citizenship laws were affected to a great extent by the corresponding French laws who are themselves influenced by the Roman legal principles of citizenship which was determined by ownership (Joseph 2000: 108). According to Lamia Rustum Shehadeh, the concept of the personal status originated during the Middle- Ages in Europe. She claims that although the Roman law continued to be followed by some states, others preferred to codify their own law based on tradition and custom. At that time in Europe, people were anxious to avoid problems that might happen through trade and travel between the different European states or provinces. Therefore, it was important to

Have two sets of rules and regulations: *Real status*, or *status réels*, derived from the Latin *res*, which dealt with material matters, *Les biens*; and *personal status*, or *status personnel*, which dealt with personal concerns.

It was further agreed by Lamia Shehadeh in her article *Gender- Relevant legal Change in Lebanon* that since people traveled frequently, the personal status code of their place of origin would be applied everywhere (Shehadeh 2010: 212). In addition, in French laws only men could own, so it was only men that comprised the citizenry while men and women are part of the property these men owned. During the French Mandate in Lebanon in the period following World War I and the end of World War II, the citizenship laws in the country were subjected to the influence of the French citizenship law that were implemented then in France.

In spite of the fact that women according to the Lebanese citizenship laws were allowed to own property and business, they were considered belonging to the head of the family and that they possessed weak individualities. Ultimately, it is this view of women that has been inscribed in the Lebanese laws regarding the regulation of transfer of citizenship across generations (Joseph 2000: 109).

Agreeing with Joseph and Shehadeh, Megan McKee claims that the French have had a strong effect in the conceptualization of the Lebanese of their citizenship and its formation. The current Lebanese laws came with the French Mandate when the French instituted the Lebanese Constitution in 1926 and introduced the French civil law in Lebanon after they had dissolved the form of government that existed in the country at the time. In doing so, The Lebanese Constitution instituted was vigorously modeled after the French Third Republic's civil code which made the governance in the country to actually follow the French Napoleonic Code which was developed according to the French Revolution of the late 18th Century (McKee 2010:1). According to McKee, the Napoleonic Code is commonly regarded as a symbol of progressive modernization as it abolishes privileges based on birth and it establishes freedom of religion and institutes reforms such as the prohibition of secret and ex post facto laws. However, the Codes in Lebanon have suffered regressively because of this French law as it has placed women under the complete control of their male guardians. In the French Third Republic, married French women, even those of majority age, were legally accorded the status of a minor. A married woman's legal status made her subordinate to her husband and made it impossible for her to enter into a contract or even defend herself in court without the presence or consent of her guardian. French law, in France, continued to decree that men alone enjoyed the right to pass on citizenship until the late 1960s (McKee 2010:1).

McKee argues that Ottoman law was far more progressive in terms of women's rights than the French law. Lebanon had been a colony of the Ottoman Empire during four centuries from the 15th century until the end of World War I when the French took over the country. Under Ottoman law, an adult Lebanese woman could enter into contracts, use the court system independent of her husband and exercise other rights that were denied to her under the new then French-inspired legal code. Moreover, women had a better position in the area of citizenship rights as a woman in Lebanon had the right to pass on her nationality to her children, regardless of her spouse's nationality, as long as her child was born on Ottoman soil; Lebanon was Ottoman soil then. Hence with the advent of the French laws a woman lost her

right to transfer her citizenship to her children and her personal status became restricted. And, instead of following the trend that was taking place in Europe in introducing reforms in this area in the 1960s, Lebanon continued and continues to enforce archaic French laws (McKee 2010: 1).

Today, the laws of family rights that are implemented to in the *Hanafi* (Sunni) courts are those that are dated back to December 25, 1917 and only amended on December 17, 1921. These laws come within the Ottoman administrative procedures related to the rights of the family. These laws are established within the following topics: the engagement, its length and the engagement gift, in the conditions of separation, in the establishment and nullification of the marriage contract, in the invalidation of divorces, in the dower, in the alimony both during marriage and after divorce; and in the *'idda* period, the three month grace period after the divorce during which she abstains from re-marriage and alimony ('al- Shāfi 2003: 3-22). Furthermore, in a law known as the 61st, established by the French Sami, De Martel, on November 18, 1936, the sectarian system was approved of and implemented. In it, the laws of marriage and divorce were to be regulated judicially by the relative religious courts one belongs to. As for all other matters, they are to be dealt with in the civil courts ('al- Shāfi 2003: 58- 62).

The impact of patriarchy on the Lebanese Constitution

According to Joseph, gender differentiation within the Lebanese Constitution and its citizenship laws had been institutionalized as a result of many factors. She argues that the citizen law of a country is a process that creates the legal subjects of the relative state. In this process, men and women are appointed unequal values within these laws. This took place in the role these laws have played in furthering the power of the extended patriarchal kinship by institutionalizing them through the codification of rules and through their practiced support to this type of kinship. This has taken place because of the privilege given to patrilineality and in transferring the authority to deal with family matters to the religious institutions which also happen to be based on patriarchy. Patriarchy is further enhanced in the Lebanese Constitution which is written in the neutral form without the specification of the applications to either men or women¹. Hence, when the legislator seeks to apply a certain law or article of the law for men only, the word men or man follows the word *Lebanese citizen* in the law or article (Joseph 2000: 114).

Joseph continues her argument in the existence of two elements that have played critically in the role and continuity of patriarchal practices in Lebanon. The first one is the lack of clear cut boundaries between the governmental, the nongovernmental and the kinship. Actors in one domain are simultaneously participants in the others. The state is used for the provision of help against one's kin in the case of honor killing; however, on other occasions the status is reversed where the kin assist against the state in discrimination and injustice. The other element is that women haven't been organized into a clear class of their own with a homogenous character. As a result, women experience citizenship differently from men. This is observed in their different identities and commitments along their loyalty to the class, religion and ethnicity they belong to rather than along feminine/ masculine causes (Joseph 2000: 10- 11).

In addition, this ambiguity of the boundaries is manifested in the existence of complex and crucial controversies between personal rights and collective ones. The latter, whether formal or informal, are subordinate to those of the state which in turn defers some of the legal prerogatives over to the collectivities, especially the religious ones. This has resulted in two assumptions among the members of the collectivities. The first one is that these best represent the interests of their members, and the second assumption is that these prefer the rule of their own institutions over that of the state. As for women, their rights have been both advanced as well as subverted by the ethnic, racial, tribal and kin collectivities within the state societies. These rights, the personal and the collective, are assumed to be oppositional and hence women are to either choose one or the other or subordinate one to the other. Hence, a diversity of constructs of rights exist leading to negotiation, mediation, play and empowerment among men and women (Joseph 2000: 120). In the Census Registry, there is another empowering aspect given to men as they are given the right to be the heads of the families while their wives are added to their family census records. In the event of a divorce, daughters are to be returned to their father's registry. A woman does not stand as an independent registered citizen in the registry. She is either registered under her father's family name or under that of her husband (Mikdashi 2010: 1). In the same article, Mikdashi adds another aspect that gives men power over women as they have the legal right to control and limit their wives movements. Husbands are given by law the right to put their wives' names at relevant international travel points and thus bar them from travelling without their certified permission.

The role of the state in the formation of the citizenship laws

The Lebanese Constitution lacks a statement that clearly declares equality between men and women before the law or in matter of economics, societal and cultural rights. In today's latest amended version of the constitution, it is observed that women and men's rights are equal in articles that are restricted to matters of politics such as the admission to all public offices which is determined by the applicant's merit and competence. Both men and women of age 21 and older have the equal right to vote for, be voted for and be elected into the legislative body, the Parliament. The electoral Law of April 26, 1960 consolidated women's political rights by stating that every Lebanese woman and man of age twenty- one and older can vote and run for office if he or she is on the electoral lists, with electoral lists required to include both men and women, not any longer being excluded to men².

However, when it comes to civil rights, Rania Maktabi claims that men and women are distinguished in terms of the civil rights that are individually based and those that are group- based. In the former ones, female citizens are included as members of the state, while in the latter case power of the religious and conservative forces is perpetuated with the disposition of patriarchal kinship structures in the society. Maktabi further argues that family laws are maintained and enhanced because of the power exercised by the religious authorities that have been maintained since the establishment of the modern Lebanon that came into existence at the beginning of the 20th Century.

The participation of religious scholars in forming and applying family law ensures the existing cultural and religious identities in society and guarantees their preservation amid societal transformations (Maktabi 2009: 7).

At present, Lebanese women are denied their full legal identities by being excluded from the rights, privileges, and security that all citizens of Lebanon must enjoy. Azam Kamguian argues that a national or the citizen is defined as someone who is a native or naturalized member of a state. A national is entitled to the rights allotted to a free individual, and is also entitled to protection from the state. However, in Lebanon women are not granted full citizenship and the laws and codes of the Lebanese state work to reinforce gender inequality and exclusion from nationality based on gender. Men are citizens and women are second- citizens. In addition, these states strengthen Islamic and tribal/familial control over women, a fact that makes them even more dependent on the family and the religious institutions (Kamguian 2003:1).

Joseph claims that the state is primarily responsible for the implementation of gender differentiation in two matters. The first one is the protection of the family rather than the protection of individual family members. Within this framework, the rights of women are expressed solely in their roles as wives and mothers. The state differentiated between men and women in the family in terms of unequal rights within family laws that among others deny women equal access to divorce and child custody. The second matter is that the state avoids protecting women from members of their own families. Being designed to protect women only within their role in the family, the law fails to protect women who are in need of protection from their families. In doing so the state fails in protecting women from violence such as domestic abuse, rape, marital rape, and honor killings; thus, the state fails to provide the protection available to a full citizen. Therefore, by ignoring issues of gender-based violence and by granting lenient punishments to the perpetrators, the men, the state actually reinforces women's exclusion from the rights of citizens (Joseph 2000: 121- 125).

The role of the state, through its process of naturalization, has furthered gender inequalities. This is done through the encoding of the regulations concerning the rights and responsibilities of citizenship which in the Middle East have been defined mainly by men in a top-down fashion. This takes place through the processes of legislation, regulation of court, the practices of the state in inventing the civil society, the family milieu within the domain of women (Joseph 2000: 121- 125). Anna Würth claims that the state of Lebanon had two motives in the codification of the family laws at the start of the Twentieth Century. One was to protect women and children from the arbitrariness of their male family members, mainly fathers and husbands. The administrative intervention by the state aimed at evening the fundamental inequality of the sexes and the generations, which formed the basis of the traditional Islamic marriage and divorce laws, and of the many customary law rulings. The other motive was the modernization of the society. However, the models used were the models of the French civil law during the French Mandate which was prevalent at the time (Würth 2004: 11). This law itself was characterized by a different but equally deep-rooted gender inequality as discussed earlier. Furthermore, according to Deniz Kandiyoti,

In Lebanon where the state incorporated the religious/ethnic heterogeneity of society into its formal structure, the government relinquished matters of family and personal status to the religious authorities of the various communities. The socialization of individuals was placed in the hands of the private sector, through subsidizing private education rather than by attempting to build a cohesive system of national education. The

appropriation of control over issues related to women and the family by the “communities” was part of a strategy by the ruling elite to maintain the balance of sectarian power in the state, and was consistent with the reproduction of a minimalist state (Kandiyoti 1988: pi161- 163).

The role of relational rights in the definition of the citizen

In Lebanon, a substantial differentiation between men and women rights is presented in their relational rights, which are neither personal nor collective. These are the rights that an individual gathers and sustains through relationships with others by providing claims that he alone or together with others construct as a result of specific relationships of mutual obligation. To be more specific, the relational rights are inherent in the sets of relationships that individuals establish with others, are properties of these relationships and hence shift and transform as relationships change. Having a relational right is a justification for a claim presented to the other in terms of obligations and entitlement, which when not fulfilled can breach the relationship (Joseph 1994: 273- 274). These relationships are an absolute necessity for the survival of the political and the social in the country. They are constructed within one's familial settings: the kinship relationships, morality and idioms from which a person's sense of entitlement to his relational rights emerges. Later, temporary and long term relationships are created beyond the kin group and are burnished with idiomatic kin terms that are used to call each other. Once this is done, expansive rights are applied in the sphere of the relationships that are created beyond those in the family. It is at this point that the patriarchal organization of kinship interferes in influencing the gendered and aged enactment of rights in Lebanon where males and elders are privileged over all others and where gendered and aged domination are legitimized through the use of kinship idioms, structures and morality in the form of a client-patron relationship. The outcome is that rights are processed through patriarchal public and private relationships which privilege males and seniors (Joseph 1994: 278- 279).

According to Joseph, in her article “*Problematizing Gender and Relational Rights: Experiences from Lebanon*”, the Lebanese state and political leaders saw themselves as benefactors; simultaneously, the citizen's rights are relational having emerged from a series of real and idiomatic kin relations organized by patriarchal relationality. Lebanon, considered to be a weak state, the effect of patriarchy is marked within the kinship that has been a critical organizing institution of the Lebanese social life, particularly in organizing gender relations. Males and seniors have the privilege to initiate and to legitimize the direction of the lives of

others as well as the enactment of rights in all arenas. These have brought negative repercussions on women as they find themselves constrained in swerving from the claims and moral dictates of kinship. In addition, their rights are at a disadvantage as they are superseded by those of males and seniors, and so these women become subject to capricious and authoritative assertions of others around them. This has been enhanced by the flow between the public and domestic spheres when individuals tend to carry with them their expectations and obligations from their kin into their public, professional and political positions. This has brought a preference and more response on behalf of the state officials and in the private economic sector in dealing with negotiations led by males and seniors. Hence, women are required to seek mediation through the men in their families in order to overcome the idiomatic patriarchal relations that are set up in such contexts (Joseph 1994: 282- 283).

Mounira Charrad agrees with Joseph's above argument as she stresses the central importance of kinship in the societies of the MENA, kin-based societies in the formation and definition of citizenship. According to her, the policy implemented in the newly formed nation states in the aftermath of colonial rule had shaped kinship as an agency when they developed decades later. The centrality of kinship affects the state, one of the key social actors involved in the construction of citizenship and gender justice. Even if social classes represent a major divide, kinship constitutes a fundamental mechanism of social integration and a basis for social conflict. A key feature of social organization in Lebanon has been the place of kin-based formations in the social structure and in politics. The extended patrilineal family and its extension, referred to as lineages, patrilineages, clans, kin groupings or tribes has played critical political roles in the economy, the polity, and every aspect of society. Furthermore, the concepts of kin-based societies, kin-based solidarities and kin-based patriarchy have had their implications on the development of the nation-state, their policies on gender, and the processes by which women have gained rights (Charrad 2007: 1).

The role of the Islamic religious institutions in the definition of the citizen

With its imbalanced rulings against women, Lebanese provisions on social welfare have been shaped by the European model of the early twentieth century. So, until the late 1990s, family laws in Lebanon were characterized by two opposed factors. On the one hand, these laws conceived traditional gender relations as defined by Islamic law, the fundamental inequality of the sexes and the subordinate role of the woman. On the other hand, they modernized gender relations through administrative intervention and by turning to European

models making marital ties gain importance, marriage be redefined and the state exercise a greater control over the institutions of marriage and family. However, this legal protection of women and children in addition to the protection of the family as an institution have been dependent on the legislative organs and the judiciary of the state, and on the institutions that are thoroughly patriarchal. This has problematized women's rights as women are dependent on the state and its will to reform laws (Joseph 2000: 112- 113). According to Joseph, the status of women is affected by the fact that the state judicial system is complicated and is especially difficult for women to reach. The courts responsible for Muslim family matters are part of the state judiciary even if the name *Shari'a* court leads people to believe otherwise. Hence, a large number of conflicts in these courts are settled out of court in traditional council meetings and in the presence of traditional authorities and most of them do not consider the courts and other state institutions, such as the police and the state prosecution, to be helpful. It is these meetings that women are not given access to. In this context, Würth claims that differentiation of this nature made worse because of the state's swaying between anti-women and pro-women forces, depending on the prevalent political mood (Würth 2004: 16).

According to Bawwābatu l-mar'a بوابة المرأة, an electronic channel that deals with different issues facing the Arab Woman (womangate.com), there exists another factor that can leave critical traces on furthering the differentiation between women's and men's rights in the courts. Accordingly, women are not able to individually deal with the corruption among the judges; the prolonged processes of the hearings and the irregular implementation of the decisions taken by the courts; the need to appoint lawyers or other legal experts due to the comprehensive spread of illiteracy and legal illiteracy among women; the high cost of lawyers that many women find difficult to deal with and the complicated bureaucratic requirements for court orders. Furthermore, this situation is further aggravated for those women who need legal intervention in many aspects of marriage and divorce. A woman's personal engagement in such cases may face a differentiated treatment in addition to the shortcomings of her losing her financial rights in trying to resolve divorce problems through settlement in a judicial process (Bawwābatu l- mar'a: 16).

The effect of globalization on the concept of the citizen

In her article, *Teaching Rights and Responsibilities: Paradoxes of Globalization and Children's Citizenship in Lebanon*, Joseph introduces the effect of globalization on the function of the state in terms of gender inequalities. According to her, what families teach

their children as their rights and responsibilities as citizens in state societies is a subject of the contradictory and complementary modes in which globalization has impacted cultural beliefs and practices and has transformed citizen subjects into complex global subjects, materially and morally. Globalization is a process that opens nation states to many influences that originate beyond their borders. These changes are likely to decrease the primacy of national economic, political, and social institutions, thereby affecting the everyday context in which children grow up and interact with the rest of the society (Joseph 2005: 1).

While it is often difficult to discriminate between influences which originate within and beyond state borders, Joseph nevertheless sees the importance of the assessment of the impact of international constructs of rights and responsibilities to which state societies have been subject or subjected to. The Western constructs have transported basic presumptions that citizens are autonomous, individualized selves with direct and unmediated relationships with the state and with rights and responsibilities embedded in their personhood. These notions have been universalized to some degree through international conventions. Perhaps more than any other Arab country, Lebanon has opened its borders to global political, commercial, social, and cultural influences because Lebanon has always been a crossroads of transcontinental movements of people, products, and ideas. With its relatively free market and being a haven for ideas, practices, and to some degree, of people, Lebanon has been the most heterogeneous Arab country. After its independence from the French mandate in 1943, Lebanon became a country which looked outward and its pluralism has continuously invited the involvement of international and regional actors in its internal affairs (Joseph 2005: 1-2). In this context, one can easily observe the effect of the most recent incidents of regional and world intervention in the local affairs of the Lebanese: the Civil War that started in 1975 during which American troops, Israeli troops, Syrian troops³, and United Nations troops have been battling in and for Lebanon for varying lengths of time.

The role parents play in their children's perception of citizenship

In Lebanon, cultural ideas and practices in teaching children their rights and responsibilities appear to reflect resistance to and assimilation of basic presumptions that are embedded in international conventions. There is the liberalist model that reflects children's rights and responsibilities as based on an autonomous and an individualist self. And, there is the connective model which is based on relational models of children's rights and responsibilities connected to patriarchal connective familial relationships (Joseph 2005: 2- 3)

In this process, parents assert their children's autonomy from young ages; yet, familial practices reflect that these children are exposed to rights and responsibilities which often reject this autonomy. Children learn that any adult has authority over them and that their rights and responsibilities are always conditioned by relationship and kinship. As a result, they learn to adapt to this double edged adjustment within the webs of sociality and relationships they are placed in simultaneously being controlled by kin or idiomatic kin moralities (Joseph 2005: 8). Because of the dense sociality children are exposed to, their rights and responsibilities, both locally and nationally, become the work of whom they know and of how they are related to them. This has resulted in their rights and responsibilities being constantly worked through known relationships.

Children learn that they have to be pro-active as citizens on behalf of their rights and responsibilities and get their rights as they don't own their rights or responsibilities. These are inherent in and produced through relationships (Joseph 2005: 1).

Chapter VIII: Religion in enhancing differentiation in the rights of women and men in the family laws of the *Shari'a* courts

In this section, there is the observation that in Lebanon, discrimination against women has further developed in the last 120 years as a result of four conditions. The Lebanese identity has become increasingly defined in terms of a religious affiliation; the developments that took place in the transformation of the original Islamic Laws during the 20th Century; the contradiction between the current practiced laws and the principles of the Islamic Jurisprudence in the Quran; and the misperception of tradition and culture as religion.

The Lebanese identity in terms of a religious affiliation

In Lebanon, religion has a fundamental and direct role in distinguishing the Lebanese citizenship on the basis of gender. This is because all subjects in this country are legalized through a membership in the available religious communities rendering their religious identities to be institutionalized as their political identities, and

The mediation of citizenship through sub- national communities appears to be an alternative to the allocation of citizenship and rights to individualized citizens (Joseph 2000: 11).

The result is the elevation of a religious identity into a civil identity. This comes as a contradiction to the homogenized, undifferentiated, detached, separable and bounded individual who is imagined in the terms of the Contractarian Theory according to which political authority is not a divine will or a perfectionist ideal of the human nature and a contract between the citizen and the political authority exists and is approved by the interest of the collection of the citizens (Joseph 2000: 23).

Contractarianism¹ names both a political theory of the legitimacy of political authority and a moral theory about the origin or legitimate content of moral norms. The political theory of authority claims that legitimate authority of government must derive from the consent of the governed, where the form and content of this consent derives from the idea of a contract or a mutual agreement. The moral theory of contractarianism claims that moral norms derive their normative force from the idea of a contract or a mutual agreement. In addition, persons are considered to be primarily self-interested, and that a rational assessment of the best strategy for attaining the maximization of their self-interest leads them to act morally whereby the moral norms are determined by the maximization of joint interest and to consent to

governmental authority. Each one is motivated to accept morality because he believes that he is vulnerable to the depredations of others and that he benefits from cooperation with others.

However, in Lebanon citizenship is observed through the emergence of the sub-national collectives, such as the religious courts, that have been naturalized throughout time. This reflects the strong connection between the gendering of the religious communities to the necessity of the relative community. Therefore, the image of the citizen as having an identity is tied to a religious affiliation which has become a requirement of citizenship in the countries concerned where according to Joseph's argument compliance is mandated by the use of religious rules with religious constraints used for the purpose of "a series of state- sanctioned religious intermediaries between the state and the citizens" (Joseph 2000: 12).

The citizen thus becomes legalized in terms of a necessity of a membership in a religious community. Accordingly, the social contract is made between the citizen and a god, God in Islam, where systematic discourses of legitimacy are not to be challenged causing the absence of the process of contest and opposition (Joseph 2000: 12- 13, 23). The gendering of citizenship in these communities is a result of the existence of a subdivision based on patriarchy in the sacred authority of religion. Exclusively male and hierarchically organized, the subsidization of patriarchy, the male authority, has been strengthened in these religious communities rendering patriarchy more assertive. Accordingly, this is further fortified by the support of patrilineality by these religious communities according to which many rights and privileges are solely attained (Joseph 2000: 24- 25). A woman may decide to stay in marriage in spite of her agony with her abusive husband because she risks losing not only legal custody of her children but also being permanently separated from them. In *Shari'a* court, her husband and his siblings as well as his parents are the rightful caretakers and givers, in support of the man's lineage where the children are assumed to belong to their fathers. Another energizing element in the impact of the religious communities on citizenship gendering is the fact that civil marriage and civil divorce laws are non- existent in Lebanon. This stands as an obstacle in the face of exogamy for women and feasibility for men while enhancing kin endogamy particularly among paternal cousins as a preferred pattern of marriage. In both cases, women are disadvantaged in their rights of determining their own destinies (Joseph 2000: 118- 119).

The changes in the original Islamic laws in the 20th Century

According to Anna Würth in her study of 2004, she pinpoints that in almost all Arab states, the sections of Islamic law dealing with marriage, divorce and the consequences of

divorce were codified only during the Twentieth Century. Commercial law along with citizenship law, social legislation, and criminal law were directly adapted from European mainly French law. With regard to family law, however, all Arab states adopted the substantive legal concepts of traditional Islamic jurisprudence, in the governing of marriage, divorce and inheritance, which led to the emergence of modern Islamic family laws in different countries (Würth 2004: 11). In Lebanon, the Constitution of May 23, 1926 states that there is no official state religion nor is *Shari'a* recognized as a source of legislation. Alternatively, recognition is given to heads of legally recognized sects, with respect to personal affairs, freedom of belief, exercise of religious rituals and freedom of religious education. In 1936, seventeen different sects were recognized by the French authorities and were included in the constitution as part of the Lebanese legislative and social structure. The constitution also provides freedom of religion and the freedom to practice all religious rites, provided that public order is not disturbed. It further requires the state to respect all religious groups and denominations and declares respect for the personal status and religious interests of persons of every religious sect.

Finally, the constitution declares equality of rights and duties for all citizens without discrimination or preference but stipulates a balance of power distributed among the major religious groups. It is this Constitution that is implemented today. All these eighteen officially recognized sects and fifteen different personal status laws and systems that manage personal and family matters each for its members make up the backbone of the Lebanese political structure which is as a result a confessional structure based on the existing sects and tribes according to which the ruling in the country is shared. Stipulated in the 1943 National Pact² 'al-mīthāq l-watanī الميثاق الوطني, an established power sharing system has existed since then between the dominant religious groups in parliament with the executive power given to a Sunni Muslim prime minister, the presidency to a Christian Maronite, and the Speaker of Parliament to a Shi'it Muslim³.

Today, the republic of Lebanon continues the practice of laws that were undertaken during the Ottoman rule according to which religious communities are granted autonomy in forming and applying their own personal status laws and hence contributed to the judicial institutionalization of religious jurisdiction. This autonomy is safeguarded under article 9 of the 1990 Constitution which restates the multi-religious system of the Lebanese Republic; therefore, Lebanon does not have a unified family law but a plurality of laws. There are two

common judicial frameworks within which the plurality of family laws is institutionally organized. One was established in 1951 for the Christian denominations and another one in 1962 for the Muslim communities. Within these two main legal institutional frameworks, each religious denomination has an independent legal authority in personal law which is attributed and limited to its members. Not all of the above mentioned institutions are dependent on the state. While the Muslim religious courts are the patronage of the Prime Minister who happens to be a Sunni Muslim himself, the Christian religious courts are not. The Catholic denominations are under the religious authority of the Pope in the Vatican⁴ and the Supreme Court of the Greek Orthodox Church lies in Damascus⁵. As for the Sunni as well as the Shiite communities, they both allow to a large extent their religious judges to interpret and apply *Shari'a* and jurisprudence since their family laws have been only partially codified (Fatany 2008).

Another differentiation between the Christian and the Muslim courts is that the state itself is present in the latter ones through a civil judge whose duty is to ensure that verdicts taken by the religious judge do not contradict the laws of the state. As for the leadership councils of the Christians and Druze, candidates for their respective senior clerical posts are nominated by their communities; however, the nomination of Sunni and Shi'it muftis is officially endorsed by the government's council of ministers, and they receive monthly salaries from the government. The Lebanese government appoints and pays the salaries of Muslim and Druze clerical judges, while the leaders of other religious groups, such as Greek Orthodox and Roman Catholics, do not receive any salaries from the government (Al- Shāfi 2003: 49- 62). According to the Family law in the Muslim Sunni Congregation, articles 17 and 18, that were issued on July 16, 1962, the relative religious courts are specialized among others within the following domains: engagement and its gift, marriage, divorce and separation, dower and bride's alimony, children custody, kinship, guardianship, proof of puberty and adulthood, matters in the will including its organization its registration as well as its execution, of the missing persons, proof of death and division of and control over inherited property, and the organization of the power of attorney within internal matters of the religious court. This family law refers in its decisions to among others the *Hanafi* Muslim School of jurisprudence that was issued on October 25, 1917, and to the legal laws found in the law of organizing the religious legal system that was issued on July 16, 1962 ('al-Shāfi'ī and 'al-Sharnibāsi 2008: 39- 46).

According to Rania Maktabi, among the countries in the Middle East, Lebanon has three outstanding characteristics. The first one is that civil marriage is optional though must take place abroad and then registered in the country. Although this type of marriage might be costly and requires travel outside the country, it provides women with a choice to decide their religious status and their partner in marriage⁶. The other characteristic is that the Lebanese citizen has the right to convert to another religious denomination. Lebanon is the only Arab state in which it is officially legal to change to the denomination of one's preference, though this might come at a high social cost inflicted by the community and the family. As for the third characteristic, governance by the Lebanese state in private affairs of its citizens is almost non-existent. This reflects a form of a social laissez- faire policy in accordance to its economic policy of laissez faire. This comes as a result of the absence of an institutional framework which addresses social and financial calamities of the citizens, in particular those related to family laws in which gender discrimination takes place (Maktabi 2009: 21).

The current Family Law in the laws of the Qur'an

Gupta's article "*Muslim Women: Status and divorce Rights under Islamic law*", reflects that today all family laws including Hindu, Muslim, Parsee, Sikh, Jain and Christian personal laws, have certain common features. All of them recognize the man as the head of the household, they sanction patrilineage and patrilocality, and they treat women as men's property. In addition, they consider the father to be the natural guardian and they perpetuate double standards in sexual morality and property rights. This sheds the light on the common knowledge among those reasonably acquainted with the law that women are greatly deprived of their rights within the laws that govern crucial aspects of the man-woman relationship including marriage and divorce, custody of children and guardianship rights, alimony and maintenance for divorced women as well as property rights (Gupta 2008:1). In the same article, Gupta considers that this comes in contradiction to the values of justice and equality that are central in Islam. Hence, there is a need to expose the factors that cause the maintenance and continuation of the discriminatory treatment of women in Islamic jurisprudential texts applied today. Gupta continues by claiming that basically, these factors are embedded in the social conditions of women in terms of marriage and divorce in the region in the pre-Islamic era and how it was affected by the laws that were prevalent then. Polygamy was widely practiced and divorce was given out of habit rather than necessity. Moreover, a woman was never a free agent in marriage, as she was largely given in marriage by her guardians, her consent being immaterial. With this, the position accorded to women

was of extreme inequality and devoid of any claim over any asset or any other rights within a context of tribal pattern predominantly patriarchal.

According to Dr. Abdul Rahman Doi⁷, it is during this era that divorce power which was under the control of men was unlimited as they could divorce their wives at any time for or without any reason. In addition, men could revoke divorce as many times as they wish and could arbitrarily accuse their wives of adultery, causing them relative dishonor while their own adultery could go without any formal retribution. With the advent of Islam, divorce became controlled in order to restrict the power of the man, and women were given the right to demand separation on reasonable grounds and were expected to be paid a dower in case of a one-sided divorce. The equality in the treatment of both sexes, as envisaged by Islam, can be ascertained from the following extract from 'āya 33:35:

Standard Arabic text:

المسلمين والمسلمات والمؤمنين والمؤمنات والقانتين والقانتات والصادقين والصادقات والصابرين والصابرات والخاشعين والخاشعات والمتصدقين والمتصدقات والصائمين والصائمات والحافظين فروجهم والحافظات والذاكرين الله كثيرا والذاكرات اعد الله لهم مغفرة واجرا عظيما

Transliteration: l-muslimīn wa-l-muslimāt wa-l-mu'minīn wa-l-mu'mināt wa-l-qānitin wa-l-qānitāt wa-l-ṣādiqīn wa-l-ṣādiqāt wa-l-ṣābirīn wa-l-ṣābirāt wa-l-khāshi'īn wa-l-khāshi'āt wa-l-mutaṣaddiqīn wa-l-mutaṣaddiqāt wa-l-ṣā'imīn wa-l-ṣā'imāt wa-l-ḥāfiẓīn furūja-hum wa-l-ḥāfiẓāt wa-l-dhākīrīn llāha kathīran wa-l-dhākīrāt 'a'adda llāhu la-hum maghfiratan wa- 'ajran 'azīm.

Translation: For Muslim men and women, for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast, for men and women who guard their chastity, and for men and women who engage much in Allah's naming for them, has Allah has prepared forgiveness and great reward for them all.

In the light of the above verse 'āya, looking back at the effects of the family law as practiced today, it is obvious that all the activities in divorce undertaken by the husbands against their wives are further overlooked by the judges and are against the classical Muslim family law as stated in the Quran. In John Esposito and DeLong- Bas' exposition of this law, it is easy to see the discrepancy between what is practiced by the Muslim legal apparatus, and the Islamic principles in matters of marriage and divorce. In the classical law, divorce is only approved of after an attempt of reconciliation in spite of the fact that a man is given the right to unconditionally divorce his wife, a one-sided divorce (Esposito & DeLong- Bas 2001:14). This is shown in 'āya 4:35 on page 77 below.

Moreover, according to Esposito and DeLong- Bas, a Muslim woman is considered as an equal partner in marriage, and so is eligible for a prenuptial agreement in which she can limit the husband's automatic and extensive legal control over her. In the classical law, a woman is also provided with dower rights, and she is to receive it in full as it is intended to safeguard her position after marriage.

Give women their dower as a free gift paid to her personally (Esposito & DeLong- Bas 2001: 23).

'Āya 4:4 expresses the above quotation:

Arabic text:

و اتوا النساء صدقاتهن نحلة فان طبن لكم عن شيء منه نفسا فكلوه هنيئا ومريئا

Transliteration: wa-'atū n-nisā'a ṣadaqāta-hunna niḥlatan fa-'in ṭib-na la-kum 'an shay'in minhu nafsān fa-kulū-hu hanī'an wa-marī'an.

Translation: And give the women upon marriage their bridal gifts graciously. In case, they give up anything of it willingly to you, then eat (take) it in pleasure and ease.

The payment of the dower is another means for the wife to control her husband's power of divorce, as upon dissolution of marriage he is required to pay the total amount of the dower he owes at once (Esposito & DeLong- Bas 2001). 'āya 4:20 reflects the latter idea as such:

Arabic text:

وان اردتم استبدال زوج مكان زوج واتيتم احداهن قنطارا فلا تاخذوا منه شيئا اتاخذونه بهتانا ومبينا

Transliteration: wa-'in 'aradtum 'istibdāla zawjan makāna zawjan wa-'ataytum 'iḥdāhunna qinṭāran fa-lā ta'khudh-ū min-hu shay'an buhtānan wa-mabīnan.

Translation: If you want to replace one wife with another and you have given one of them a great amount of gifts, do not take back from it anything. You take it in injustice and manifested sin.

Today, in the 21st century we find that all the advantages that were at the disposal of women in the original Islamic laws have disappeared from the applied laws of today, and that the recommendations that came from the Prophet himself are not being respected by today's jurists. As a result, in today's societies women are under almost total subjugation to the males in male dominated patriarchal societies, most obvious in the personal family status laws (Gupta 2009:1). This is happening while the Quran and the Prophet's teachings are being selectively quoted by those who command enough respect to initiate any form of change thereby defeating any chances of that happening. The misleading principles that are used today are at total variance with the true spirit of Islamic law as contained in the Quran because

of the lack of access by courts to the primary sources of Islamic law. In addition, this fact has been overlooked by the legislators as they avoid agitations and reprisals by the conservative and orthodox Muslims. However, in spite of all the attempts done today to revise the practice of divorce, the current traditional jurisprudence recognizes that men's unilateral repudiations remain legally effective (Gupta 2009:1).

Culture and religion

Culture is not necessarily religion, but it tends to impose itself upon religion as a legitimate practice due to the belief that the traditions of a people are representation of their religious' practices (Coulson 1994: 143). This is most evident in what is known about the harsh treatment of women in the Middle East, especially in marriage (Green 2009:1). Most argue that there are two controversial views to this truth. The Qur'an presents a different picture of how women should be treated in marriage as compared to cultural practices and many articles and books deal with the rights of woman in Islam relating the truth in their production of what prophet Muhammad النبي محمد has designated as the proper and humane treatment of women. However, there is another side to this truth as many other books and articles tell a darker set of stories of horrific treatment of women that in some ways reflect certain known aspects of Middle Eastern cultures including that of Lebanon.

Khalil Green in the above mentioned article uncovers the laws of equity that were a glorious achievement in Islam. As we have seen earlier, in Chapters 2 and 4 of the Quran, it is written that God does not favor divorce and encourages marriage to continue. Divorce is not to be entreated except in exceptional circumstances emphasizing simultaneously the right of women to choose who they will marry. It gives them freedom from violence and provides recourse to divorce. Women are not taught to be silent and unheard but have the right to challenge the laws of the land when those laws are based on cultural misgivings. In addition, if a woman finds that she has been mistreated, the Quran gives her the right and power to divorce. She is not forced to stay in an unpleasant situation and her dower cannot be taken away unless she chooses to return it, and she has the freedom to decide to remarry. Green argues that there is a need to rediscover the message that the Prophet Muhammad brought this in order to end primitive practices. Islam, unlike current cultural practices, mandates that women be afforded every care and be allowed to obtain any goal they set for themselves. Far too many cultures that call themselves *Muslim lands* have turned from the Quran in favor of cultural and family traditions that are not conducive to the proper development of women as

they strive to fulfill their goals in life. Some have suggested that culture must be set aside for a more humane treatment of women in Muslim Lands and a return to the Quran and a shedding of archaic cultural practices and traditions must be realized. Many would agree that the fair treatment of married women is a starting point (Green 2009:1).

In the Quran, controversial to the present practice in Lebanon, a man cannot divorce his wife whenever he wishes and end her role as a mother and wife without further responsibilities. There are a number of steps to strictly follow in order to secure the rights for both husband and wife in the divorce. The first step is that divorce must be mutually decided. In 'āya (2: 226-227),

Arabic text:

للذين يؤلون من نساءهم تربصوا الأربعة أشهر فان فاءوا فان الله غفور رحيم

Transliteration: li-l-ladhī-na ya'ūlū-na min nisā'a-hum tarabbaṣū 'arba'ata 'ashhur fa-'in fā'ū fa-'inna llāha ghafūran raḥīm.

Translation: However, if one of them does not give his or her consent two arbitrators, one from each family, are appointed in order to try and work on a reconciliation that is reasonable for both, and if not, the couple must divorce equitably. God is merciful and forgiving.

As a second step according to 'āya 4: 35, divorce laws apply equally to both men and women,

Arabic text:

وان خفتم شقاقا بينهما فابعثوا حكما من اهله وحكمان اهله ان يريدوا اصلاحا يوفق الله بينهما ان الله كان عليما خبيراً

Transliteration: wa-'in khift-um shiqāqan bayna-humā fa-b'athū ḥakaman min 'ahli-hi wa-ḥakaman min 'ahli-hā, 'in yurīd-ā 'iṣlāḥan yūwaffiqu llāhu bayna-humā 'inna llāh kāna 'alīman khabīr.

Translation: And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will make it happen between them two. Indeed, Allah ever knows and is acquainted with all things.

The third step is to ensure that the wife gets half her dowry in case the husband decides not to have her before having had any sexual intercourse with her. This is clarified in 'āya 2: 237,

Arabic text: فان طلقتموهن من قبل ان تمسوهن وقد فرضتم لهن فريضة ، فنصف ما فرضتم الا ان يعفون او يعفو الذي بيده عقدة النكاح وان تعفوا اقرب للتقوى ولا تنسوا الفضل بينكم ان الله بما تعملون بصير

Transliteration: fa-'in ṭallaqtumū-hunna qabla 'an tamussū-hunna wa-qad farāḍ-tum la-hunna farīḍatan, fa-niṣfu mā farāḍtum 'illa 'an ya'fū-na aw ya'fu l-ladhī biyadi-hi 'iqdata l-nikāh

wa-'an ta'fu 'aqrab lil-taqwá wa-lā tansū l-faḍlā bayna-kumu 'inna llāha bimā ta'malūna baṣīr.

Translation: And if you divorce them before you have touched them and you have already specified for them graciousness that is between you. Indeed Allah, of all you do, is seeing.

The following step lies in the wife's duty according to which she has to wait for three months before getting married again in order to secure whether she is pregnant or not and in case she regrets her decision and wants to return to her husband. This is reflected in āya 2: 228,

Arabic text:

والمطلقات يتربصن بأنفسهن ثلاثة قروء ولا يحل لهن ان يكتمن ما خلق الله في ارحامهن ان كن يؤمن بالله واليوم الآخر وبعولتهن احق بردهن في ذلك ان ارادوا اصلاحا ولهن مثل الذي عليهن بالمعروف وللرجال عليهن درجة والله عزير حكيم

Transliteration: wa-l-mutallaqāt yatarabaṣ-na bi-'anfusi-hunna thalāthat quru' wa-lā yaḥullu la-hunna 'an yaktu-manna mā khalaqa llāhu fī 'arḥāmi-hinna 'in kunna yu'minna billāhi wa-l-yawm l-'ākhari wa-bu'ūlatu-hunna 'aḥaqqu bi-raddi-hinna fī dhālika 'in 'arādu 'iṣlāḥan wa-la-hunna mithla l-ladhi 'alay-hunna bi-l-ma'rūfi wa-lil-rijal 'alay-hunna darajatan. wa-llāhu 'azīzan ḥakim.

Translation: Divorced women must wait for three periods (months), and it is not lawful for them to conceal what Allah has created in their wombs (being pregnant) if they believe in Allah and the Last Day. Their husbands have more right to take them back in this period if they wish reconciliation. The same is expected of the wives, according to what is reasonable. But the men are superior to them in responsibility and authority. And Allah is dear and wise.

The above inequity in favor to men can also be understood through Noel Coulson's argument about the development in today's legal Islamic practices as an approved-of deviation from the original Islamic laws that came in the revelations of Muhammad the Prophet. Her argument comes in terms of the traditional picture of the growth of Islamic law which completely lacks the dimension of historical depth. Muslim jurisprudence in its traditional form provides an example of a legal science divorced from historical considerations. Law in the classical Islamic theory is the revealed Will of God, a divinely ordained system preceding and not preceded by the Muslim States, controlling and controlled by Muslim society. In other words, there is no evolution of the law with the progress of society. Therefore, the discovery and formulation of this divine law is a process that takes place in isolation from the historical development of the society, without any external criteria, and without reference to the circumstances of particular epochs of localities (Coulson 1994: 166).

Muslim legal philosophy of *Sharī'a* law has been the elaboration and the analysis of *Sharī'a* law in abstracto rather than a science of the positive law resulting from judicial tribunals. In this context, the function of Muslim Jurisprudence has always been to tell the courts what ought to be done instead of prophesying what they will in fact do. It is here then that the distinction between the ideal doctrine and the actual practice that is administered by the courts within a debate of whether this practice has coincided with or deviated from the norms of the *Sharī'a*. It is evident that Muslim legal literature has shown little interest in this matter, and the majority of the Muslim jurists have also supported this indifference. This is reflected in the absence of a law-reporting system that can report the deviances committed when the political authorities have induced the jurists to adopt a discretionary policy of ignoring rather than denying. This happens whenever the religious law doesn't coincide with the demands of the political application (Coulson 1994: 2 - 3).

Today and over the last few decades, the notion of *Sharī'a* as a rigid and abiding system has been dismissed by the legal developments in the Muslim World. This is mostly noticeable within the substance of the *Sharī'a* family law as applied by the courts. It has been profoundly modified in adapting to the needs and the temper of society. This legal modernism has been justified in the notion that the Will of God was never expressed in rigid and comprehensive terms but rather embedded in general principles which admit that varying interpretations and varying applications are conceivable according to the circumstances of the time. Hence, these so called modern activities are believed not to be a departure from the one legitimate position of *Sharī'a* but a preservation of the continuity of Islamic legal tradition (Coulson 1994: 7- 8).

How *Sharī'a* has become equated with Islamic law is also argued as a central element in the enhancement of gender discrimination in the Arab world, a modern phenomenon that began in the 1970s with the politicization of Islam. The meaning of *Sharī'a* in modern debates has been distorted and curtailed because the focus was not limited to the origin and validity of legal norms but has expanded to include the shaping of social relations, the political systems and the orientation of the individual lifestyle to religious and ethnic concepts. This focus developed as result of the absence of familiar models of ideology and development in the Arab world. Therefore, religiously inspired models of way of life were increasingly sought by people in order to reshape their social and political conditions in a more authentically Islamic form (Würth 2004).

According to Kamguian, the status of women and the choices that they have within the family, at work and in social life have become a symbol for Westernization versus Islamization. As a result of the process of the politicization of Islam, societies and states in the Middle East have become more conservative in their values while Islamic arguments are gaining considerable ground at all levels (Kamguian 2007: 1). Political Islam is a major force that in recent decades has inflicted serious setbacks on women's lives in the region. It is a political movement against secular and progressive movements for liberation and egalitarianism. It is also against cultural and intellectual developments, and against the oppressed who are fighting for justice, freedom and equality in the Middle East region. At the basis of political Islam, one finds the key characteristics of opposition to the freedom of women and to women's civil liberties, and to freedom of expression on both the cultural and the personal level (Kamguian 2007: 1).

Conclusion

Over the last century since the end of the Ottoman colonization of Lebanon, Muslim Lebanese women have been trapped in a comprehensive system that hasn't allowed them any chance to attain equal religious rights or any civil rights in terms of Personal Status Laws.

According to Lina Khatib in her article "*Gender, Citizenship and political Agency in Lebanon*", the government of Lebanon has played an important role in maintaining the differentiation between the rights and status of men and women when it ratified the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) that was held in 1997. Within personal status laws, it reserved the articles in dealing with nationality, marriage rights, divorce rights, child custody, parenting, and the same personal rights for husband and wife, including the right to choose a family name, a profession and an occupation:

These reservations not only render CEDAW ineffective, they also de facto preclude any future or further discussion on how to improve the various existing international human rights and women's rights conventions (Khatib 2008: section II).

In this perspective, Personal Status Laws govern the private sphere including marriage, divorce, maintenance, child custody, citizenship and inheritance. This has had an effect on women's public lives acting as a powerful control mechanism over women's economic, political, social, civic and cultural activities. The control over women in Personal Status Laws emphasize identity as physically embodied rather than abstract through men's and women's different experiences of power which are highlighted with sexual equality resting in the male body:

When men and women are treated the same, it means women are treated as if they were men; when men and women are treated differently, the man is the norm, against which the woman is peculiar, lacking and different (Khatib 2008: 441).

Moreover, discrimination against women has been further affirmed in the draft law that was recently issued by the Lebanese Cabinet on December 12th 2011¹. Accordingly, Lebanese expatriots and their decedents back to three generations can reinstate their Lebanese nationality; however, this is only limited to those who are blood related to Lebanese fathers rather than to Lebanese mothers. The criticism to this law came from the Claiming Equal Citizenship Campaign, "my Nationality is my Right and that of my Family". It was

directed to the fact that the law doesn't include the children of the Lebanese mothers married to non- nationals inspite of them living, studying, and working in Lebanon.

Arabic text:

لقد أقرّ مجلس الوزراء اللبناني الحالي في جلسته نهار الإثنين الواقع في 12 كانون الأول 2011، مشروع "قانون إستعادة الجنسية اللبنانية للمتحدريين من أصل لبناني بمنح الجنسية وفقاً لرابطة الدم من الأب والجد وليس من الأم أو الجدة

Transliteration: laqad 'aqarra majlis l-wizarā' l-lubnānī fī jalsati-hi nahāra l-'ithnayni l-wāqī' fī 12 kānūna l-'awwali sanat 2011, mashrū'a 'isti'ādat l-jinsiyya l-lubnāniyya lil-mutaḥaddirīn min 'ašlin lubnānī bi-manḥi l-jinsiyya wifqan li-rābiṭati d-damm mina l-'abb wa-j-jadd wa laysa mina l-'umm aw j-jadda.

Translation: In its meeting of 12 December 2011, the current cabinet endorsed a draft law to reinstate the Lebanese nationality to emigrants of Lebanese limited to fathers and grandfathers only not mothers or grandmothers

According to the campaign, the law is a further proof of Lebanon's persistent patriarchal mindset which clearly considers citizenship to be a male attribute:

The cabinet members justified their endorsement of this draft law by their desire to include emigrants of Lebanese descent in the economic and political life in Lebanon. Whilst this may be understandable, yet, how does the cabinet justifies the fact that it has totally ignored the dire social and economic situation of Lebanese women married to non-nationals and their families who consider Lebanon to be their home and the Lebanese nationality to be their right?².

In addition to the above mentioned campaign, Lebanese Women who have always desired a change and were afraid of sounding it individually have found a relief in the collective mobilization in the last decade:

No to religious family laws, yes to a unified civil status laws". "No to confessionalism, yes to secularism". "No to communal identities, yes to one national identity.

These are some of the slogans that have been observed in the last few years in the streets and cities of Lebanon and aired through the different forms of mass media in the country. These have been the cries uttered by women of all religious background against official discrimination in their rights. However, these cries have been met by a minimal response on behalf of the government and its different institutions. Marriage is still administered by the religious institutions and the marriage contract remains a contract between the man and the court of the religious sect he belongs to instead of it being between him and his wife. Marriages are still administered under laws that demarcate between men and women.

Moreover, all matters of citizenship are still in the hands of the religious authorities. Primary identities continue to be strongly communal and the Lebanese still interpret their national identity accordingly; hence, the notion of Lebanese nationhood is almost non-existent, and Lebanon as state remains the sum of its communities. It is these communities that do not allow the differentiation between themselves, the individuals in it and their kinships.

The civil society-led campaigns to amend Lebanon's religious laws have been active and seem to be increasing in momentum. However, they have been quite fruitless in terms of introducing change. In the absence of democracy in Lebanon, these efforts must be conjoined with action to be directed towards grass root levels rather than the political level in order to increase a more maintainable and permanent change. Improving literacy and the standard of living of the poorest classes is one of the fundamental pillars towards real democracy without which gender inequity will persist.

The political sentiments held by a misled, indoctrinated and ignorant populace are not to be regarded as the people's real will (Cranston 1969: 44).

King- Irani considers that moving forward toward real change can take place in terms of the enlightenment of this part of the society that has the biggest potential to become politically active. It is only then that legal inequity will slowly dissipate and democracy will dominate. It is vital to nurture, support, and revitalize grassroots networks concerned with women's issues in Lebanon. Emphasis must be put on the cultural, inter-subjective, and socioeconomic matrices of everyday life that either advance or hinder women's effective and meaningful participation in the political process in the country. Attaining positions of political leadership presupposes the generation of significant people power from below, and not only among women's groups or feminist activists (King- Irani 2003: 39- 52).

In our times, democracy is undoubtedly the most credible and valued principle of social organization. It is premised on the ethical, pious notion and hope that all humans are equal and should all have equal rights in the construction and direction of all activities affecting their social lives, and that people have the right to articulate their views and their interests in an open and competitive fashion, without fear of falling foul or into disfavor with those in authority" (Kwaa Prah 2007: Intro).

Notes

Introduction

1. On Consociationalism and Confessionalism in Lebanon. NeareastQuarterly web 25.01.2011
<<http://www.neareastquarterly.com/index.php/2011/09/08/on-consociationalism-and-confessionalism-in-lebanon>>
2. About the conditions of a prenuptial agreement refer to Pasha Nasir. The Marriage Contract: its Basic Elements (Islamic view). 2011. Web. 25.05.2011
<Articlesbase.com>
3. Hanafi web 23.01.2011 <<http://en.wikipedia.org/wiki/Hanafi>>

Chapter I

1. Tripoli is today the second-largest city and second-largest port in Lebanon, with approximately 500,000 inhabitants, with a majority of Sunni Muslims (approximately 80%), along with a small minority of Orthodox and Maronite Christians, and a small minority of Alawite Muslims web 04.05.2011
<http://en.wikipedia.org/wiki/Tripoli,_Lebanon>

Chapter II

1. Extracted from 2007. EM (Lebanon) v Secretary of State for Home Department [2008] UKHL 64: House of Lords: session 2007-08. Family Law Week.
2. Divorce in Islam. Families.com web. 23.05.2011
<<http://muslim.families.com/blog/divorce-in-islam>>
3. Taken from Women's Corner: Divorce web. 23.05.2011
<<http://fanar.gov.qa/womencorner/divorce.aspx>>
4. Divorce by Dr. Hassan Hathout web 30.06.2011
<<http://www.islamicity.com/voi/transcripts/Divorce.htm>>
5. Mufti of the Lebanese Republic is the religious leader of all Muslims in Lebanon and their representative at the official authorities in Lebanon and abroad. He is the leader to all religious officials and administrators at the Awkaf (Islamic Departments that manage Muslim estates) and religious divisions in Lebanon. He is also the superior leader of Sunni Muslim scholars, which he guides and issues directions. In addition to the above, he enjoys all other rights and privileges enjoyed by the heads of the other largest religious communities in Lebanon. He heads the Dar Alfatwa (Sunni Muslim authority Office, Headed by the Mufti of Lebanon) Hassan Khaled web 02.02.2011
<http://en.wikipedia.org/wiki/Hassan_Khaled#Duties_of_the_Grand_Mufti_in_Lebanon>
6. Under the "Sunni Hanafi" law: 156. The Mother has the right of custody of her children during marriage and after separation if conditions of eligibility are ensured (Article 380 of the Shari'a Law). In the case of dispute over custody, the mother is eligible for custody of the male child until he is 7 years old, whereas of the female child until 9 years old. The reader is reminded of the new law of June 6 according to which the custody age became 12 years. Refer to chapter IV

Chapter III

1. Examples of such an agreement:
Options for an Islamic prenuptial agreement by Sound Vision Staff Writer web. 10.01.2011
<<https://www.soundvision.com/info/weddings/prenuptial.asp>>
2. Refer to the article by Mills, 2007 web 31.07.2011
Education in Lebanon: On average, the literacy rate is 87% (women 82%, men 94%)
<<http://en.wikipedia.org/wiki/Lebanon#Education>>
<<http://i-cias.com/e.o/lebanon.education.htm>>
Elementary Level according to the World Bank database, gross enrollment rate of elementary level of basic education is for 96.8 percent for male, 93.9 percent for female, and 95.4 percent for total in 2007. And, the gross enrollment rate of intermediate level is 83.2 percent for male, 90.7 percent for female, and 86.9 percent for total in 2007
Education in Lebanon web 21.03.2011 <http://en.wikipedia.org/wiki/Education_in_Lebanon>
3. Ibid

Chapter IV

1. The Lebanese Constitution and the Lebanese woman: Ghada Adnan Hadib web 11.11.2011
<<http://taxesinlebanon.tripod.com/law/women&law.htm>>

Chapter VII

1. Arabic text: الدستور اللبناني الصادر في ٢٣ ايار سنة ١٩٢٦ مع جميع تعديلاته الى سنة ١٩٩٠
Transliteration: 'Al- dustūr l- lubnāniy l- šāder fi lalāta wa- 'iṣrīn min šahr 'ayyār min sanaṭ 'alf wa- tis'umi'a wa- sitta w-'iṣrīn, ma'a ḡamī'a ta'dilātihi 'ila sanaṭ 'alf wa- tis'umi'a wa- sittīn.
Translation: The Lebanese Constitution issued in 1926 with all its amendments until 1990, The Parliament of Lebanon,
 2. Article 9 in chapter two of the electoral law issued on 26th April 1960 by the Lebanese Parliament.
Arabic text: في من يجوز أن يكون ناخباً لكل لبناني أو لبنانية أكمل الحادية والعشرين من عمره الحق في أن يكون ناخباً إذا كان يتمتع بحقوقه المدنية والسياسية وغير موجود في إحدى حالات عدم الأهلية المنصوص عليها في القانون.
Transliteration: fī man yajūza 'an yakūna nākhiban Likulli lubnāniyin aw lubnāniyyatin 'akmalā l-hādiya wa-l-'iṣrīn min 'umrihi l-ḥaqq fī 'an yakūna nākhiban 'idha kān yatamatta'ū bi-ḥuqūqihī l-madaniyyati wa-l- siyāsiyyati wa-ghayra mawjūdān fī 'ihda ḥālāt 'adam l-'āhiliyyati l-manṣūṣ 'alayha fī l-qānūn.
Translation: In who has the right to elect: Every Lebanese man and woman of twenty one of age or older has the right to participate in the electoral process if he is in possession of his civil and political rights and is not found incompetent in any of the cases that the law has specified.
 3. Extracted from Wikipedia web. 07.07.2011
 <http://en.wikipedia.org/wiki/Syrian_occupation_of_Lebanon>

Chapter VIII

1. Stanford Encyclopedia of Philosophy web. 30.12.2010
 <<http://plato.stanford.edu/entries/contractarianism>>
2. National Pact web. 31.12.201 <http://www.enotes.com/topic/National_Pact>
3. Lebanon has an area of 4,035 square miles and a population of four million. Because the relative size of confessional groups remains a sensitive issue, a national census has not been conducted since 1932. However, the most recent demographic study conducted by Statistics Lebanon, a Beirut-based research firm, indicate 27 percent of the population is Sunni Muslim, 27 percent Shiite Muslim, 21 percent Maronite Christian, eight percent Greek Orthodox, five percent Druze, and five percent Greek Catholic, with the remaining seven percent belonging to smaller Christian denominations. Over the past 60 years, there has been a steady decline in the proportion of Christians relative to Muslims, mostly due to emigration of large numbers of Maronite Christians and a higher-than-average Muslim birth rate. There are also very small numbers of Jews, Baha'is, members of the Church of Jesus Christ of Latter-day Saints (Mormons), Buddhists, and Hindus.
4. Rekindling the Reformation: The Vatican II council web 08.07.2011
 <http://rekindlingthereformation.com/S-deception-unity_ecumenical_council_Catholic_Church.html>
5. Extracted from web. 09.01.2011
 <<http://www.google.com.lb/search?hl=ar&source=hp&biw=&bih=&q=the+Supreme+Court+of+the+Greek+Orthodox+Church+lies+in+Damascus&btnG=%D8%A8%D8%AD%D8%AB+Google%E2%80%8F>>
6. Civil weddings were not allowed in Lebanon in 2009. In fact, marriages between inter-religious couples are only legal if they occur outside the Lebanese border. Till recently, it was obligatory for a citizen to declare their religious affiliation on official records. In February 2009, the Interior Ministry granted Lebanese citizens the right to keep their faith private on official identification. This did not include recognizing civil marriages. One of the political parties in the country is advocating the introduction of an optional civil personal status law in the country. This is not the first time that an attempt has been made to make civil marriages legal in the country. A previous attempt took place back in 1998 when the then president forwarded a legislation to permit optional civil marriage to the Cabinet. The Cabinet approved it despite the objection of the then Prime Minister and some other ministers. However, when reaching the Parliament, it had to be shelved due to the strong resistance from the religious leadership of all sects.
7. Prof. Abdul Rahman I. Doi. What status does the Sunna give men and women? web. 23.01.201

<<http://www.islamanswers.net/woman/manAndWomen.htm>>

8. āya is a verse in the Qur'ān, referred to by the chapter number first.

Conclusion

1. Nationality campaign web 14.12.2011

<<http://nationalitycampaign.wordpress.com/2011/12/14/إعداد-الوزراء-مجلس-إقرار-رداً-على>>

2. ibd

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